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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL., ETC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED NOVEMBER 18, 1930

(35,477)

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VOL. I

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IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. No. 563

GEORGIA PUBLIC SERVICE COMMISSION and JAMES A. PERRY, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners Thereof, Petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Defendants

BILL OF COMPLAINT—Filed Feb. 18, 1930

To the Honorable the Judges of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners, constituting the Georgia Public Service Commission, and the said Georgia Public Service Commission, bring this their bill of complaint against the United States of America and Interstate Commerce Commission, and respectfully show:

[fol. 2] I

That the petitioners, James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, are citizens of the State of Georgia and are the duly elected, qualified and acting Commissioners constituting the Georgia Public Service Commission.

The said petitioner, Georgia Public Service Commission, is an administrative tribunal created and existing under the constitution and statutes of the State of Georgia, having its official residence in the City of Atlanta, which is in the Northern District of Georgia and so within the district of this Court.

II

This suit is brought to enjoin, set aside, annul and suspend certain orders of the Interstate Commerce Commission and is instituted under the provisions of the Urgent Deficiency Appropriations Act, approved October 22, 1913 (38 Stat. L., 219; Chap. 32), and petitioner invokes the jurisdiction of this court under the provisions of said Act and of the so-called Commerce Court Act (36 Stat. L., 539), and of Section 207 of the Judicial Code.

Defendant, United States of America, is made such by virtue of the provisions of the aforesaid acts. The defendant, Interstate Commerce Commission, is an administrative tribunal created by Act of Congress, approved February 4, 1887 (24 Stat. L., 379), as later amended (hereinafter referred to as the Interstate Commerce Act), whose duties and powers are defined in such Act and in Acts amendatory thereof and supplemental thereto.

[fol. 3] III

Heretofore, on, to-wit, the 5th day of October, 1925, the said Interstate Commerce Commission entered an order which instituted a proceeding of inquiry upon petition filed in that behalf by Atlantic Coast Line Railroad Company and others (the said petitioners being common carriers engaged in the transportation of property by railroad in interstate commerce and as such subject to the Interstate Commerce Act). The purpose of said proceeding of inquiry was stated in said order, namely, to determine whether the then existing carload rates on sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in carloads (either and all of said materials are for convenience referred to hereafter by the term sand and gravel, etc.), required by an order theretofore entered by petitioner, Georgia Public Service Commission, under date of February 25, 1925, to be maintained by said Atlantic Coast Line Railroad Company and others for intrastate movements at said hearing testimony was offered by the aforesaid petiundue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or in any undue, unreasonable, or unjust discrimina-

tion against interstate or foreign commerce; and if so, what rates or what maximum rates, or minimum rates, or maximum and minimum rates, should be prescribed to be charged to cure the situation. All railroads operating in the State of Georgia subject to the jurisdiction of the Interstate Commerce Commission were made respondents to this said proceeding, and the Governor of Georgia and the Georgia Public Service Commission were given due notice thereof. The said investigation was assigned Docket No. 17517.

[fol. 4]

IV

Certain formal complaints were filed with said Interstate Commerce Commission by various parties engaged in the shipment of sand and gravel, etc., including a complaint filed with said Commission and assigned by it Docket No. 17763, wherein Roquemore Gravel Company, a corporation, with principal office in the City of Montgomery, Alabama, and Dixie Sand & Gravel Company, a corporation, with principal office and place of business at Chattanooga, Tennessee, were petitioners and certain railroad companies subject to the Act as common carriers by railroad were named as respondents; the said respondents constituted some, but not all, of the railroad companies operating within the State of Georgia, and some railroad companies not having lines or operating within said State of Georgia.

The aforesaid formal complaints under Docket No. 17763, and in certain other proceedings were consolidated by the Interstate Commerce Commission for hearing and investigation with its aforesaid proceeding of inquiry under No. 17517.

V

Thereafter, the Interstate Commerce Commission held a public hearing at Atlanta, Georgia, before Ernest I. Lewis, a commissioner of said Commission, and E. H. Waters, a special examiner thereof, duly appointed and qualified under Section 20 of said Act for the taking of testimony and at said hearing testimony was offered by the aforesaid petitioners, Atlantic Coast Line Railroad Company, et al., on whose motion the investigation in No. 17517 had been entered as aforesaid, by the complainants in No. 17763, by

the Georgia Public Service Commission and by various other parties, interveners and respondents in said proceedings.

[fol. 5] VI

Thereafter, following briefs and oral argument, the Interstate Commerce Commission entered its report dated January 21, 1927, reported in Volume 122 of I. C. C. Reports, at pages 133 to 176, inclusive, and its formal order dated January 21, 1927, entitled in No. 17517 and in No. 17763 and in other proceedings consolidated therewith. The said report and order prescribe certain bases of rates, as maximum rates, to govern the interstate transportation of sand and gravel, etc., between points in the State of Georgia and points in other states in southern territory, as defined therein. The report and order contain no findings against intrastate rates maintained or charged within the State of Georgia, and state that the order of the Georgia Public Service Commission which had been entered February 25, 1925, could not be found to have brought about a rate situation which had in the past been unjustly discriminatory against interstate commerce. A copy of the aforesaid report and order of January 21, 1927, is attached hereto, marked as Exhibit A, and made a part hereof.

VII

Theretofore, your petitioner, Georgia Public Service Commission, pursuant to its statutory duties, had entered its order dated February 25, 1925, and effective April 1, 1925, wherein said Commission had approved a general revision of rates on sand and gravel, etc., between points in the State of Georgia, by railroad, over all of the railroads in said state, in intrastate commerce.

[fol. 6] VIII

Thereafter, following the Interstate Commerce Commission's report and order of January 21, 1927, Exhibit A hereto, petitioner Georgia Public Service Commission entered its further order dated the 13th day of March, 1928, prescribing maximum rates for the intrastate transportation of sand and gravel, etc., over all of the railroads in the

State of Georgia. A copy of said order is attached hereto as Exhibit B, and made a part hereof.

IX

Thereafter, the Interstate Commerce Commission entered its further order dated the 4th day of June, 1928, reopening the said proceedings for further hearing and investigation in respect of certain issues only, that is to say for the sole purpose of determining whether the rates and minimum weights required by the aforesaid order of the Georgia Public Service Commission to be maintained by aforesaid railroad companies respondents therein, on intrastate shipments within Georgia, of sand and gravel, etc., in relation to the interstate rates and minimum weights prescribed by the Interstate Commerce Commission, will cause any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce. A copy of the said order of June 4, 1928, is attached hereto as Exhibit C, and made a part hereof.

[fol. 7]

X

Thereupon, the matter was heard further at Atlanta before the aforesaid Examiner Waters, duly appointed and qualified as aforesaid, on, to-wit, the 26th, 27th and 28th days of December, 1928. At said hearing further testimony was received from various parties to the hearing, including petitioner Georgia Public Service Commission; and material and competent evidence which was tendered by your petitioner was refused by the Examiner and not received; and incompetent, irrelevant, and immaterial evidence offered by carriers was received by the Examiner over the objection and protest of counsel for Georgia Public Service Commission, to the prejudice of said petitioner.

XI

Thereafter, the Interstate Commerce Commission entered its supplemental report and order dated December 9, 1929, and reported in Volume 160, I. C. C. Reports, at page 309.

A copy of said report and order is attached hereto as Exhibit D, and made a part hereof. The Interstate Commerce Commission therein undertakes to require the respondent railroad companies to establish on or before March 3, 1930, and thereafter to maintain and continue in force and effect indefinitely, until the further order of said Commission, and to apply to the intrastate transportation of sand and gravel, etc., between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, not exceeding the rates set forth in the appendix to the order; and the appendix sets forth distance scales of rates to be applied according to a certain formula as set forth in the report, not governed by the mileages over the actual routes over which the transportation is performed.

[fol. 8]

XII

Theretofore, the Interstate Commerce Commission made an investigation into rates within and into the State of Florida not germane or relevant to any issue of the propriety, reasonableness and lawfulness of the rates on aforesaid materials within the State of Georgia, or in interstate commerce into or out of said State of Georgia; and the Commission had entered its supplemental report of December 21, 1927, with respect to said further investigation on said issues, which report is not relevant or material to any issues involving the propriety, reasonableness and lawfulness of the rates on aforesaid materials within the State of Georgia, or in interstate commerce into or out of said State of Georgia. It is reported in Volume 140 of said I. C. C. Reports, beginning at page 85.

XIII

Following the Interstate Commerce Commission's aforesaid report and order of December 9, 1929, Exhibit D hereto, petitioner Georgia Public Service Commission filed with said Interstate Commerce Commission its petition for rehearing wherein various assignments of error were made against the Commission's aforesaid report and order of December 9, 1929, with the prayer that the same should be vacated and set aside and other relief was prayed, as

set forth in said petition. A copy of the aforesaid petition is attached hereto as Exhibit E, and made a part hereof.

XIV

The aforesaid petition for rehearing by Georgia Public Service Commission, Exhibit E hereto, was denied by the Interstate Commerce Commission in order entered the 3d day of February, 1930.

[fol. 9]

XV

Your petitioners are informed and believe that the Atlantic Coast Line Railroad Company and various other railroads named as defendants or respondents in the aforesaid orders of the Interstate Commerce Commission, are about to cancel and annul their present rates for the intrastate transportation of sand and gravel, etc., within the State of Georgia, which schedules comply or purport to comply with the aforesaid order of petitioner, Georgia Public Service Commission, dated March 13, 1928, Exhibit B hereto.

Your petitioners are further informed and believe that said Atlantic Coast Line Railroad Company and other railroads so named in said orders are about to establish and put in force and apply for the intrastate transportation of said materials on their lines within the State of Georgia rates which are higher than permitted by the lawful orders of the Georgia Public Service Commission and which are ostensibly required by the terms of the aforesaid orders of the Interstate Commerce Commission. The said schedules if and when so established or applied will violate the statutes of the State of Georgia and the constitution of said state governing transportation by railroad in intrastate commerce in said state.

XVI

Therefore, having exhausted their efforts and remedies under the Interstate Commerce Act, and with the Interstate Commerce Commission, your petitioners herein respectfully institute this proceeding for the purpose of annulling and setting aside the aforesaid reports and orders of the Interstate Commerce Commission and to enjoin the enforcement thereof in so far as such reports and orders re-

[fol. 10] quire or may require the Atlantic Coast Line Rail-

road Company and any and all other railroad companies within the State of Georgia, jointly and severally, to establish, put in force and maintain any rates whatsoever for the transportation of sand and gravel, etc., in intrastate commerce within the State of Georgia.

As grounds for said prayer, your petitioners respectfully show unto the court that the said reports and orders of the Interstate Commerce Commission are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission, and wholly invalid and unlawful in the following respects and for the following reasons, among others:

(a) Aforesaid reports and orders constitute an unlawful invasion of the sovereign rights of the State of Georgia reserved to it by the Constitution of the United States, and of the citizens of the said State of Georgia, and are without warrant or authority under the Constitution of the United States.

(b) Aforesaid reports and orders constitute an unlawful exercise of power by said Interstate Commerce Commission, without warrant or authority under the Constitution of the United States or the Interstate Commerce Act, as amended.

(c) Aforesaid reports and orders are arbitrary and unlawful in that in substance they purport and seek to restrain and enjoin the Georgia Public Service Commission from requiring the railroads to charge, for intrastate transportation of aforesaid materials within the State of Georgia, rates which are the same in amount for corresponding distances of actual transportation, or on the same basis, as interstate rates which the aforesaid carriers are permitted by said Interstate Commerce Commission to continue charg-
[fol. 11] ing for interstate transportation into and out of said State of Georgia and in territory contiguous thereto.

(d) Aforesaid reports and orders are arbitrary and unlawful in that they purport to and do impose a formula to govern rates for transportation of said materials within the State of Georgia, not in harmony with a lawful order heretofore entered by the Georgia Public Service Commission prescribing maximum rates for said intrastate transportation; and said Interstate Commerce Commission has

no power conferred on it by law to prescribe a rate-making formula, as such, its authority being limited to prescribing reasonable rates, as maximum rates or as minimum rates.

(e) Aforesaid reports and orders are arbitrary and unlawful in that they prescribe rates for actual services of transportation over actual routes of movement in intrastate commerce within the State of Georgia and also in interstate commerce, to be made with regard to fictitious mileages, that is to say, with regard to the distances over routes that are not used and which neither the Interstate Commerce Commission nor the Georgia Public Service Commission could require the carriers to operate as through routes for the transportation of property without infringement of the constitutional rights of said carriers and of their rights under paragraph (4) of Section 15 of the Interstate Commerce Act.

(f) The aforesaid reports and orders are erroneous in law and the Commission was without jurisdiction to enter them in so far as they purport to fix rates for the intrastate transportation aforesaid, because under the Commission's order instituting the aforesaid inquiry in No. 17517, under the allegations of the complaint in the aforesaid case No. [fol. 12] 17763, and under the aforesaid order of June 4, 1928, reopening the said proceedings for further hearing and investigation, the issues were limited so that the Commission did not have jurisdiction to enter a valid order under the terms of Section 13, or of any other section of the Interstate Commerce Act.

(g) Aforesaid reports and orders are erroneous and invalid because the record of evidence on which they were entered does not show the transportation conditions, or the circumstances and conditions under which aforesaid materials actually are transported for the respective intrastate movements within the State of Georgia and interstate movements into and out of said state, and therefore the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates, on the one hand, and under the interstate rates, on the other hand.

(h) The report and order are erroneous because there is no substantial evidence of record in the proceedings wherein

they are entered warranting or requiring a finding that the rates for the transportation of the materials in question now charged, or which are made or imposed by authority of the State of Georgia, or any of said rates, for said intrastate transportation, cause any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce; and in fact, the aforesaid intrastate rates are not preferential, or prejudicial, or discriminatory, or burdensome.

(i) The aforesaid reports and orders are erroneous and invalid because the Interstate Commerce Commission [fol. 13] therein undertakes to require reductions in intrastate rates within the State of Georgia, which are wholly beyond the jurisdiction of said Commission to reduce; and because the rates therein required tend to create and will create unjust discriminations and undue preferences as among different and competing shippers and producers of said materials in Georgia, in violation of the statutes of said state governing such intrastate transportation.

(j) The aforesaid reports and orders are erroneous and invalid because they are not supported by evidence and they are contrary to the manifest weight of the evidence in these proceedings.

(k) Aforesaid reports and orders are unlawful and invalid for other and manifest errors of law and of fact.

Wherefore petitioners respectfully pray:

1. That process may issue against the defendants, United States of America and Interstate Commerce Commission, an administrative tribunal of the United States, with service thereof and of this bill of complaint in the manner prescribed by statute.

2. That this Honorable Court will grant to petitioners herein an interlocutory order, setting aside and enjoining enforcement of the aforesaid orders of the Interstate Commerce Commission or so much thereof as require or au-

thorize the railroad common carriers therein named as defendants to cease and desist from maintaining their present rates and to establish, put in force and maintain in lieu thereof, rates for the transportation of chert, sand, gravel, crushed stone, slag, and analogous materials, in carloads, moving in intrastate commerce within the State of Georgia, on the basis prescribed in said orders.

3. That upon final hearing, there will be made and entered a decree and order of this Honorable Court annulling, [fol. 14] setting aside and enjoining the aforesaid reports and orders of the Interstate Commerce Commission wherein said Commission has undertaken to authorize and require the defendant common carrier railroads named in its aforesaid orders to establish, put in force and maintain certain rates for the transportation of said materials, in carloads, in intrastate commerce within the State of Georgia, and to cease and desist from charging any rates lower than the aforesaid basis so prescribed by said Commission.

4. That petitioners may have such other and further relief in the premises as to the court shall seem meet and just and as equity may require.

For all of which petitioners forever pray.

Respectfully submitted.

S. J. Smith, Luther M. Walter, Nuel D. Belnap, John S. Burchmore, Solicitors for Petitioners.

[fol. 15] *Duly sworn to by James A. Perry. Jurat omitted in printing.*

[fol. 16] EXHIBIT A TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 17517[1]

Rates on Chert, Clay, Sand, and Gravel Within State of Georgia

Submitted November 13, 1926. Decided January 21, 1927

1. Maximum reasonable interstate rates based on single-line and joint-line distance scales prescribed on sand, gravel, crushed stone, and slag, for uniform application over standard lines from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi, between points in Georgia, and between points in Georgia and other points in southern territory, except points in Florida.

2. Certain so-called short lines accorded arbitraries over the rates prescribed for standard lines.

3. Rates on gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi also found unduly prejudicial to the extent they exceed, distance considered, rates contemporaneously maintained on slag from Birmingham and certain other Alabama points to same destinations.

---

[1] This report also embraces No. 17699, Roquemore Gravel Company et al. v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17699 (Sub-No. 1), Same v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17689, Roquemore Gravel Company et al. v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17763, Same v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17764, Dixie Sand & Gravel Company v. Atlanta, Birmingham & Atlantic Railway Company et al.; No. 17764 (Sub-No. 1), Same v. Atlanta, Birmingham & Atlantic Railway Company et al.; and Investigation and Suspension Docket No. 2470, Sand, Gravel, and Slag from Alabama and Tennessee to points in Georgia.

4. Proposed increased rates on slag from Copperhill, Tenn., to points in Georgia, found not justified and ordered canceled, without prejudice to establishment of rates on basis found reasonable.

5. Complaint in No. 17689 dismissed.

6. Intrastate rates in Mississippi not shown to result in undue prejudice to complainants.

Charles E. Cotterill and M. M. Caskie for complainants and Tennessee Copper Company; and J. L. Griffith for complainant Dixie Sand & Gravel Company.

[fol. 17] Frank E. Gwathmey for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Central of Georgia Railway Company, and others; E. D. Mohr for Louisville & Nashville Railroad Company; H. L. Walker for Southern Railway system lines and Mobile & Ohio Railroad Company; John A. Streyer for American Short Line Railroad Association; and Roy Pope for Atlanta, Birmingham & Atlantic Railway Company and its receiver.

A. G. Patterson and J. H. Alldredge for Alabama Public Service Commission; M. C. Moore, Rush H. Knox, and B. F. Martin for Mississippi Railroad Commission and attorney general of Mississippi; James A. Perry, Walter R. McDonald, and E. M. Price for Georgia Public Service Commission; Edwin Brooker for Atlanta Sand & Supply Company, Allen Sand Company, Stone Mountain Granite Corporation, and others; John S. Burchmore for Tri-State Road Material Association; B. F. Martin for Colbert Limerock Asphalt Company, Alabama Rock Asphalt Company, and Uvalde Paving Company; T. P. Goodwin for Simpson County Granite Company; E. Del Wood and B. R. Sheperd for Chattanooga Manufacturers Association; C. R. Moffett for Tennessee Copper Company; C. E. Jones for Birmingham Traffic Association; A. J. Ribe for Birmingham Slag Company and Montgomery Gravel Company; Edgar Watkins, H. T. Moore, and E. L. Hart for State Highway Commission of Georgia, city of Atlanta, counties of Fulton and De Kalb, and Atlanta Freight Bureau; R. A. McCaffrey for Alabama Iron & Steel Shippers' Conference; J. B. Dunlap for B. Mifflin Hood Brick Company; Albert Mayer for C. W. Moore, Central of Georgia Sand Company, and

Acme Sand & Supply Company; Otho M. Graves for National Crushed Stone Association; E. J. Cosgrove for Florida Rock Products Company; and H. L. Brooks for [fol. 18] North Georgia Marble Products Company, Thompson Weinman & Company, and Ladds Lime & Stone Company.

Report of the Commission

LEWIS, Commissioner:

Exceptions to the report proposed by the examiner were filed by complainants, the carriers, and various interveners and oral argument was had. Our conclusions differ somewhat from those which the examiner recommended.

No. 17517 is a proceeding instituted by us upon petition filed on behalf of the Atlantic Coast Line, hereinafter called the Coast Line, and eight short-line carriers[2] operating in the State of Georgia to determine whether the present carload rates on chert, clay, sand, gravel, and other allied commodities[3] required by the Georgia Public Service Commission order of February 25, 1925, to be maintained by petitioners for intrastate movements between points in Georgia result in any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or in any undue, unreasonable, or unjust discrimination against interstate or foreign commerce; and if so, what rates or what maximum or minimum, or maximum and minimum, rates shall be prescribed to be charged to cure the situation. All railroads operating in the State of Georgia subject to our jurisdiction were made

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[2] Savannah & Statesboro Railway Company; Greene County Railroad Company; Georgia Northern Railway Company; Flint River & Northeastern Railroad Company; Georgia, Ashburn, Sylvester & Camilla Railway; Macon, Dublin & Savannah Railroad; Georgia, Florida & Alabama Railway; and Tallulah Falls Railway Company.

[3] Chert, clay, gravel (washed or unwashed), sand (common) straight, or sand and gravel mixed, shale, slag (granulated, lump, or pulverized), stone, granite (crushed), flagging rubble, or stone screenings.

respondents to this proceeding, and the Governor of Geor-
[fol. 19] gia and the Georgia Public Service Commission were given due notice.

The complaint cases and the investigation and suspension proceeding were all heard with the title case on one record, and all will be disposed of in one report.

In Nos. 17699, 17699 (Sub-No. 1), 17764, and 17764 (Sub-No. 1), the allegations are in substance that the rates on sand and gravel maintained by the defendants from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia, Florida, and Mississippi are unreasonable, and as to gravel also unduly prejudicial in favor of slag shipped from Birmingham, Ala., and other producing points, such as Gadsden and Anniston, Ala., and Copperhill, Tenn. In No. 17763, it is alleged that the rates on sand and gravel from Montgomery and Chattanooga to destinations in Georgia and Mississippi are unreasonable and unduly prejudicial in favor of intrastate shippers of the same commodities between points within the said States and also in favor of shippers of crushed stone intrastate between points in Georgia. In No. 17689, it is alleged that the rate of 79 cents per ton maintained on sand from certain specified points in Georgia located on the Central of Georgia, and the Atlanta, Birmingham & Atlantic to Birmingham is less than a just and reasonable rate. We are asked in all of the complaint cases to require the establishment of just, reasonable, and nonprejudicial rates for the future.

The only issues remaining for determination in Investigation and Suspension Docket No. 2470 involves the propriety of certain schedules by which the Louisville & Nashville proposes to increase the rates on slag from Copperhill, Tenn., to certain points in Georgia. Upon protest of the Tennessee Copper Company and others the operation of the schedules was suspended by us and subsequently voluntarily postponed by the respondent to February 27, 1927.

[fol. 20] Various parties intervened in behalf of their respective interests and formal petitions of intervention were filed on behalf of the following: City of Atlanta, Fulton and DeKalb Counties, Ga., State Highway Commission of Georgia, Atlanta Freight Bureau, National Crushed Stone Association, Birmingham Slag Company, Montgomery Gravel Company, Colbert Limerock Asphalt Company, Ala.

bama Rock Asphalt Company, Uvalde Paving Company, in all cases; the Alabama Public Service Commission, in all formal complaint cases; Tri-State Road Material Association, in formal complaint cases except Nos. 17764 and 17764 (Sub-No. 1); Tennessee Copper Company, Incorporated, in Nos. 17763, 17764, and 17764 (Sub-No. 1); Chattanooga Manufacturers' Association in Nos. 17764 and 17764 (Sub-No. 1); Birmingham Traffic Association in Nos. 17699 and 17699 (Sub-No. 1); Alabama Iron & Steel Shippers' Conference, C. W. Moore, Central of Georgia Sand Company, and Acme Sand & Supply Company in No. 17689; and in No. 17763 various interests engaged in the production and sale of crushed stone at Stone Mountain, Stockbridge, Lithonia, Macon, and Atlanta, Ga., and at Columbia and Trenton, S. C., and certain interests engaged in the production and sale of sand at Gaillard and Rollo, Ga.

Rates are herein stated in dollars and cents per ton of 2,000 pounds. Only carload rates are involved.

The testimony relates almost entirely to rates on gravel, crushed or broken stone, and slag, in their different phases, and to sand, and while certain other commodities of minor importance are included in some of the exhibits and for that reason appear in the report, the parties manifest no particular interest in them. Our consideration and findings will be confined to the commodities above named.

The issues presented in these proceedings are somewhat complex. Much testimony and voluminous exhibits were [fol. 21] introduced. The record as made shows the existence of a keen competitive situation in the production and sale of these commodities and calls for a consideration of the rates on them throughout a substantial part of southern territory.*

The commodities considered in these proceedings are used chiefly in the building of highways and in concrete con-

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* Southern territory, as the term is used in this report, is roughly the territory east of the Mississippi River and south of the Ohio River and the line of the Norfolk & Western from Bristol, Tenn.-Va., to Norfolk, Va. It does not include the eastern corner of Kentucky served by the Chesapeake & Ohio. It is the territory in which freight rates are generally governed by the southern classification.

struction work. The amount of construction of improved highways in the South has been and is increasing from year to year, and the tonnage transported by the southern carriers of these commodities has assumed large proportions and is a material revenue producer. Exhibits submitted of record show that Class I railroads during the year 1924 originated in the southern district, exclusive of the Pocahontas region, 23,700,740 tons of commodities, which are classed under the general description of clay, gravel, sand, and stone. This tonnage was exceeded only by that of products of the forest, and of bituminous coal. The commodities considered are among the lowest valued offered for transportation and will not move except at comparatively low rates. They are transported generally in open-top cars, load to capacity of the car, and move with little risk of damage or loss. Crushed stone, slag, and washed gravel compete in concrete construction and in the building of hard-surfaced roads. Clay gravel is described as a commodity that carries a certain amount of clay and other ingredients which serve as a natural binder, whereas unwashed gravel is composed of sand and gravel. Clay gravel, without the addition of any other ingredient, is used extensively for the building of roads in the South. Roads so constructed cost much less than do those of concrete or mac- [fol. 22] adam construction. Therefore in the building of roads, clay gravel, crushed stone, slag, and washed gravel compete with each other in that the choice of one for a particular project renders the use of the other practically unnecessary. The record leaves no doubt of actual and active competition between all of these commodities, except possibly sand. The use of sand is necessary as a filler in forming the coarse aggregate for concrete or hard-surface construction work, and as it is of comparatively low value there is apparently no practicable substitute for it.

Sand and crushed stone are produced at numerous points in the South. Gravel is produced at fewer points. The Montgomery district produces more sand and gravel than any other district in the South. For example, it was estimated by a witness for complainant, Roquemore Gravel Company, located at Montgomery, and a large producer of

washed gravel, in which production sand is a by-product, that the Montgomery district produces from 1,500 to 1,800 cars of sand and gravel per week. However, assuming 50 tons to a car, this estimate appears excessive in view of the fact that an exhibit of record shows that the total production of sand and gravel in Alabama for the year 1923 was but 1,829,559 tons. Sand and gravel is also produced at Chattanooga. Sand as a chief product and also crushed stone are produced at numerous points in Georgia. Georgia produces no washed gravel or slag, and such products, when needed, are purchased from without the State. The chief points of production of crushed stone in Georgia are located in the Stone Mountain and Lithonia districts near Atlanta. There are also quarries near Macon at such points as Holton and Toomsboro, and in the northwestern part of the State at Graysville, Ladds, and Chestatee. Sand in large quantities is produced at such points as Rollo, Gaillard, Howard, and Junction City, Ga. The two points first men- [fol. 23] tioned are about 95 miles from Atlanta and the other two about 165 miles via the Central of Georgia from that point. Sand is produced at various other points in Georgia. Sand is also produced in large quantities in Florida, and both sand and gravel at numerous points in Mississippi. Great quantities of crushed stone, sand, and gravel are produced in the Carolinas. Large quantities are produced around Columbia, S. C. Slag is a by-product of iron and steel production and is produced chiefly in the Birmingham district. It is also produced at Copperhill. It was estimated that 1,750,000 tons of slag is produced in the Birmingham district per year. Appendix A shows most of the points of production in the South of the respective commodities with State and railroad located.

Producers of these various commodities naturally seek to reach the markets of large consumption, and the evidence shows that the chief consuming markets in the South are the Atlanta and Birmingham districts. Florida is likewise sought as a market for gravel, slag, and crushed stone.

Values

At a conference between the parties held at the opening of the hearing agreement could not be reached as to the

average values of the different commodities at shipping points throughout the territory here considered. The testimony produced shows in numerous instances substantial differences in prices as between different producers of the same commodity, and also a considerable range of prices at the respective points of production. Competitive conditions have much to do with price levels. Summarizing the testimony of various witnesses upon this question it appears that the prevailing average range and the general average of prices in cents per net ton at shipping point approximate those shown below.

[fol. 24]

Commodity	Average range	General average
	Cents	Cents
Sand	20 to 50	35
Clay gravel	25 to 45	35
Washed gravel	40 to 80	60
Crushed rock	105 to 165	135
Slag (crushed and screened)	As high as 135	75
Slag (bank run)	20 to —	

Due to the numerous points of sand production scattered throughout southern territory that commodity moves shorter distances on the average than does gravel. There is apparently an overproduction of sand in the Montgomery district, and the evidence of the Montgomery complainant, which as stated, produces sand as a by-product, is that this company sells sand at prices ranging from 15 to 20 cents, except when sold in the Montgomery district where the price is from 10 to 15 cents higher, and when shipped to Birmingham, where as much as 30 cents is received. Crushed stone is the highest-priced commodity here considered, which is due to its higher cost of production. For this reason it has a natural disadvantage in competing with washed gravel and slag. The evidence indicates that crushed stone produced in Georgia sells on the average somewhat below that produced in the Carolinas. The evidence as to unwashed gravel is meager. One witness testified that it sells for about the same as clay gravel.

Rates

The evidence produced by the trunk-line carriers in these proceedings shows that they now publish for general ap-

plication throughout the territory here involved interstate distance scales of rates which as a rule are applicable alike on all these commodities. The State commissions also have generally prescribed distance scales for intrastate application and under these scales certain of these commodities are often accorded lower rates than others. Some of the [fol. 25] Southern States permit and some of the Southern State commissions have prescribed lower scales of rates for application when the commodities are consigned to State, county, or municipal authorities, referred to herein as municipal rates. No municipal rates, however, are maintained in Georgia. The granting of such reduced rates is also permissible under the interstate commerce act. Their extended application to this traffic, which moves in great volume, must result in breaking down any general scale that may be prescribed.

It was testified for the various trunk-line carriers that, while there are some exceptions, as a general rule their interstate scales, or rates based thereon, are being applied to the movement of these commodities between points in the South. The exceptions as shown, however, are numerous and very important. The record shows that due to the competition between shippers and their desire to reach distant and important markets, as well as to the competition between carriers, numerous specific rates to meet particular situations are now in effect to the markets of large consumption, which rates are far below the carriers' interstate scales and show little regard, if any, for distance. Such rates are apparently moving a large tonnage of these commodities in the South. Viewing the rate situation both interstate and intrastate as disclosed by this record, it cannot be said to be harmonious as applied to the actual movement of these commodities throughout the territory here considered.

One of the strongest arguments in behalf of a reasonably low general scale on these low-grade commodities is that it would afford little justification for municipal and low competitive point-to-point rates, the maintenance of which results in shifting to other traffic the burden of making up for loss of revenue caused thereby.

As a result of a petition filed by Georgia carriers, the Georgia commission in 1917 undertook to revise all in-

[fol. 26] trastate class and commodity rates, but due to subsequent Federal control its order never went into effect. In 1921 the Georgia commission directed the Georgia carriers to submit schedules of class and commodity rates designed to remove all existing discriminations and at the same time preserve the carriers' existing revenues. Extensive hearings were held and intrastate rates in Georgia on classes and on various commodities were prescribed. On February 25, 1925, the Georgia commission ordered a revision as of April 1, 1925, of the rates on the commodities here under consideration. As a result of this order the Coast Line and the eight short lines above mentioned filed the petition which resulted in our investigation in No. 17517.

Prior to April 1, 1925, there was in effect for application between points on standard lines within Georgia a maximum class P commodity scale of rates applicable to intrastate movements of most of these commodities. This scale was equivalent to that prescribed by the Georgia commission in 1915, subjected subsequently to authorized general increases and reductions. There was no joint-line mileage scale within Georgia prior to April 1, 1925, and in the absence of specific through rates lowest combinations applied to joint hauls, observing as a maximum 90 per cent of the local rates. It was stated for the Georgia commission that when it undertook to revise the rates on these commodities it was found that the rates that were actually moving the bulk of the traffic in Georgia were much lower than the class P scale; that these specific rates had been put in by the carriers from time to time, each adjustment being made to take care of some particular need.

At the time of the Georgia commission's order here in question there were many specific interstate rates from shipping points into Georgia which were lower than both the carriers' interstate scales and the prescribed Georgia scales. In view of this situation the Georgia commission's order [fol. 27] establishing its new scales on April 1, 1925, contained a provision as follows:

In no instance shall the rates on the commodities covered by this order be higher between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other

states, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul.

The intrastate rates between points in Georgia where higher than the prescribed Georgia scales were reduced to that basis on April 1, 1925, but due to lack of time for the carriers to complete the revision of the lower interstate rates into Georgia, the Georgia commission postponed the effective date for compliance with the above-quoted provision until August 1, 1925. The carriers subsequently filed with us certain schedules to become effective August 1, 1925, in which it was proposed to increase the interstate rates on these commodities from various shipping points to Georgia destinations to the basis of the Georgia scales. For example, increases were proposed from such points as Montgomery, Birmingham, Chattanooga, and Copperhill. Protests were filed by the Alabama Public Service Commission, and by various sand, gravel, and slag interests located at these and other points. We refused to suspend the proposed rates, with certain exceptions, and finally permitted them all to become effective except those proposed by the Louisville & Nashville on slag from Copperhill to certain points in Georgia which are involved in Investigation and Suspension Docket No. 2470, heard with these proceedings. Most of these increased rates became effective August 1, 1925. This action brought about the filing of these formal complaints by the Montgomery and Chattanooga complainants.

The scales of rates prescribed by the Georgia commission on all the commodities were subject to a minimum of 60,000 pounds. But the rates on crushed stone, washed gravel, and slag were made 10 cents per ton higher than those on unwashed gravel, clay gravel, and sand.

[fol. 28] The table below shows the scales of rates submitted by the Coast Line as being in effect on that line between points in Georgia prior to April 1, 1925, as compared, up to 300 miles, with the single-line scales for class A carriers effective on the above date as a result of the Georgia commission's order. There is also shown the single trunk line scale which the carriers submitted in 1921 to the Georgia and Alabama commissions, less 10 per cent.

This latter scale is the one which they assert is now generally being applied by the trunk lines in the South and is the one which the carriers are now proposing for uniform application throughout the territory here involved, except to points in Florida south of the Seaboard Air Line from Jacksonville to River Junction.

Distance	Prior to Apr. 1, 1925[1]			Proposed[4]	Apr. 1, 1925, prescribed by Georgia commission[5]	Apr. 1, 1925, prescribed by Georgia commission[6]
	Chert, gravel, sand (n. o. s.) slag, stone, crushed or rubble[2]	Stone flagging (stone blocks paving rough)[3]	Clay shale[3]			
	Cents	Cents	Cents	Cents	Cents	Cents
5 miles	53	75	37	45	50	40
10 miles	58	81	42	50	50	40
15 miles	67	89	50	54	50	40
20 miles	69	92	53	59	60	50
25 miles	72	94	58	63	60	50
30 miles	75	97	60	68	60	50
35 miles	78	100	65	72	70	60
40 miles	81	103	68	77	70	60
45 miles	83	106	70	81	70	60
50 miles	83	106	70	86	80	70
55 miles	89	108	73	90	80	70
60 miles	92	114	80	90	80	70
65 miles	94	117	83	95	90	80
70 miles	97	119	85	95	90	80
75 miles	100	122	88	99	90	80
80 miles	103	125	93	99	90	80
85 miles	106	128	95	104	100	90
90 miles	108	131	98	104	100	90
95 miles	114	133	103	108	100	90
[fol. 29]						
100 miles	117	130	108	108	100	90
110 miles	119	142	110	113	100	90
120 miles	122	144	113	117	110	100
130 miles	125	147	115	122	110	100
140 miles	128	150	120	126	120	110
150 miles	131	153	125	131	120	110
160 miles	133	156	128	135	120	110
170 miles	139	158	130	140	130	120
180 miles	142	164	135	140	130	120
190 miles	144	167	138	144	130	120
200 miles	147	169	140	144	140	130
210 miles	150	172	143	149	140	130
220 miles	153	175	148	149	140	130
230 miles	153	175	150	153	150	140
240 miles	156	178	150	153	150	140
250 miles	158	181	153	158	150	140
260 miles	158	181	155	158	150	140
270 miles	164	183	158	162	160	150

Distance	Prior to Apr. 1, 1925[1]				Apr. 1, 1925, prescribed by Georgia commission[5]	Apr. 1, 1925, prescribed by Georgia commission[6]
	Chert, gravel, sand (n. o. s.) slag, stone, crushed or rubble[2]	Stone flagging (stone blocks paving rough)[3]	Clay shale[2]	Proposed[4]		
	Cents	Cents	Cents	Cents	Cents	Cents
280 miles	167	189	160	162	160	150
290 miles	167	189	163	167	160	150
300 miles	169	192	163	167	160	150

[1] Rates prior to April 1, 1925, were published per car (minimum weight as indicated). For comparative purposes rates have been reduced to ton of 2,000 pounds, and fractions of less than 0.5 cent are dropped, fractions of 0.5 cent or over increased to the next unit.

[2] Carload minimum weight 36,000 pounds.

[3] Carload minimum weight 40,000 pounds.

[4] Single-line trunk-line scale submitted by carriers to Georgia and Alabama Commissioners in 1921, less 10 per cent and is scale carriers are now proposing in these proceedings; carload minimum weight marked capacity of car.

[5] Applies on gravel (washed) in bulk, carload minimum weight 60,000 pounds; slag, granulated, lump or pulverized, in package or in bulk, carload minimum weight 60,000 pounds; and stone or granite, viz., crushed flagging, rubble, or stone screenings in bulk, in straight or mixed carloads, minimum weight 60,000 pounds.

[6] Applies on chert, in bulk, carload minimum weight 60,000 pounds; clay, crude, in bulk, carload minimum weight 60,000 pounds; gravel (not washed), or sand and clay gravel, in bulk, carload minimum weight 60,000 pounds; sand (common) straight, or sand and gravel mixed, in bulk, carload minimum weight 60,000 pounds; shale, in bulk, carload minimum weight 60,000 pounds.

[fol. 30] The following table taken from an exhibit is illustrative of increases in actual going rates to Atlanta from representative Georgia points as well as from interstate points, which became effective as a result of the Georgia commission's order, which increased rates are compared with the scale proposed by the carriers in these proceedings:

To Atlanta from—	Carrier	Miles	Rate prior to effective date of Georgia Commission order, 1925	Present rate as result of Georgia Commission order, 1925	Actual increases per ton	Carriers' proposed scale
Sand:						
Juliette, Ga.	Sou. Ry.	64	$0.57	$0.80	$0.23	$0.95
Lowry, Ga.	Sou. Ry.	34	.57	.60	.03	.72
Dames Ferry, Ga.	Sou. Ry.	72	.57	.80	.23	.99
Popes Ferry, Ga.	Sou. Ry.	74	.57	.80	.23	.99
Mussella, Ga.	Sou. Ry.	82	.57	.90	.33	1.04
Asbestos, Ga.	G. & N. W.	83	.90	.90		1.04
Roberta, Ga.	Sou. Ry.	88	.57	.90	.93	1.04
Gaillard, Ga.	Sou. Ry.	94	.57	.90	.33	1.08
Rollo, Ga.	Sou. Ry.	95	.57	.90	.33	1.08
Allon, Ga.	Sou. Ry.	96	.57	.90	33	1.08
Zenith, Ga.	Sou. Ry.	98	.57	.90	.33	1.08
Norris, Ga.	Ga. R. R.	131	1.02	1.10	.08	1.26
Howard, Ga.	C. of Ga.	163	.90	1.20	.30	1.40
Junction City, Ga.	C. of Ga.	166	.90	1.20	.30	1.40
Towns, Ga.	Sou. Ry.	175	.90	1.20	.30	1.40
Lumber City, Ga.	Sou. Ry.	182	.90	1.20	.30	1.44
Albany, Ga.	C. of Ga.	210	.82	1.10	.48	1.49
Chehaw, Ala.	W. Ry. of A.-A. & W. R. R.	135	.59	1.10	.51	1.26

To Atlanta from—	Carrier	Miles	Rate prior to effective date of Georgia Commission order, 1925	Present rate as result of Georgia Commission order, 1925	Actual increases per ton	Carriers' proposed scale
Sand:						
Chattanooga, Tenn.	Various	137	1.02	1.10	.08	1.26
Arrowhead, Ala.	W. Ry. of A.-A. & W. R. R.	161	.63	1.20	.57	1.40
Montgomery, Ala.	W. Ry. of A.-A. & W. R. R.	174	.77	1.20	.43	1.40
Pruitts, Ala.	M. & O.	178	.77	1.20	.43	1.40
Gravel:						
Chehaw, Ala.	W. Ry. of A.	135	1.02	1.20	.18	1.26
Chattanooga, Tenn.	Various	137	1.02	1.20	.18	1.26
Arrowhead, Ala.	W. Ry. of A.	161	1.02	1.30	.28	1.40
Montgomery, Ala.	W. Ry. of A.	174	1.06	1.30	.24	1.40
Crushed stone:						
Stone Mountain, Ga.	Ga. R. R.	15	.57	.50		.54
Stockbridge, Ga.	Sou. Ry.	19	.57	.60	.03	.59
Lithonia, Ga.	Ga. R. R.	24	.68	.60		.63
Holton, Ga.	Sou. Ry.	79	.68	.90	.22	.99
Graysville, Ga.	N., C. & St. L.	120	1.10	1.10		1.17

[fol. 31] The following table taken from an exhibit also compares the rates on sand and washed gravel in effect prior to August 1, 1925, from Montgomery to various points in Georgia located on the Atlanta & West Point Railroad with the present rates between the same points. The present rates in nearly all instances are on the basis of the Georgia scale.

From Montgomery, Ala., to—	Miles	Sand		Washed gravel		Carrier' proposed single-line scale
		Rates prior to Aug. 1, 1925	Present rates	Rates prior to Aug. 1, 1925	Present rates	
West Point, Ga.	88	$0.77	$0.90	$0.84	$0.90	$1.01
Lagrange, Ga.	103	.77	.90	.90	.90	1.13
Hogansville, Ga.	117	.77	1.00	1.06	1.10	1.17
Moreland, Ga.	129	.77	1.00	1.06	1.10	1.22
Newnan, Ga.	135	.77	1.10	1.06	1.20	1.26
McCollin, Ga.	149	.77	1.10	1.06	1.20	1.31
Phillipsdale, Ga.	153	.77	1.10	1.06	1.20	1.35
Union City, Ga.	157	.77	1.10	1.06	1.20	1.35
Red Oak, Ga.	162	.77	1.20	1.06	1.30	1.40

While there are many interstate rates to and from Georgia points based on the carriers' interstate scales which are higher than the present Georgia scales, yet the conclusion is justified from this record that the larger part of this traffic prior to August 1, 1925, moved from interstate points to Georgia at much lower rates than it has since that date and that the same is true respecting the intrastate movements between points in Georgia, prior and subsequent to April 1, 1925. Material increases in numerous important going rates both between points in Georgia and interstate into Georgia were brought about by the Georgia commission's order, and while there are many examples of such increases shown of record the above illustrations are sufficient to portray the situation.

The carriers, however, contend that the Georgia commission's order, in so far as increases were involved, merely [fol. 32] increased certain depressed rates which that commission had theretofore refused to permit the carriers to increase. It is stated, for example, that several unsuccessful attempts had been made to increase the intrastate rates to Atlanta from points on the Southern's Fort Valley branch, and that the refusal of these increases forced the Southern, as well as other lines, to establish low competitive rates from various other points to Atlanta.

The Coast Line, the only trunk line party to the petition which resulted in the order of investigation in No. 17517, assumed the burden of attempting to show that the present rates prescribed by the Georgia commission are too low. It was testified that this traffic both from the standpoint of tonnage and revenue is of great importance to the Coast Line and that, with the exception of the Southern system lines, it handles more of this traffic than any other carrier in the South. In 1924 the Coast Line handled 3,750,195 tons of these commodities, which was equivalent to 18.1 per cent of its total tonnage for that period, and in the first 10 months of 1925 it handled 4,452,519 tons, which produced in revenue $4,074,316. The Coast Line originates a vast tonnage of these commodities in Virginia, the Carolinas, and Florida. The amount which it originates in Georgia is comparatively small. While the Coast Line claims that such Georgia traffic as it originated prior to April 1, 1925, moved to a great extent on the Georgia scales then in effect, yet neither it nor

any other carrier presented any evidence or claim that the Georgia commission scales of April 1, 1925, resulted in reducing the carriers' revenue.

On the other hand, it was shown on behalf of the Georgia commission that the Georgia proportion of gross operating revenues on all traffic of various carriers for the six months ending November 30, 1925, exceeded the proportion for a like period in 1924 by the following percentages: Coast [fol. 33] Line 42.9 per cent, Atlanta, Birmingham & Atlantic 9.5 per cent, Atlanta & West Point 17.1 per cent, Central of Georgia 13.7 per cent, Seaboard Air Line 22.6 per cent, Southern Railway 17.5 per cent, and various other carriers in amounts ranging from 1.7 to 45.8 per cent. A witness for the intervenor Atlanta Freight Bureau, who is of the opinion that the present Georgia rates are too high, offered an exhibit which purports to show that taking the tonnage of slag, gravel, sand, and crushed stone which moved to Fulton County, Ga., and to the city of Atlanta from Georgia and interstate points in 1925 for road-building purposes alone, which is said to represent about one third of the total movement, and applying thereto, respectively, the increased rates resulting from the present Georgia scales and the rates herein proposed by the carriers, the results would be increases in freight charges over those under the prior rates of $114,415 and $163,235, respectively.

Evidence was presented on behalf of the Charleston & Western Carolina to show that the present Georgia scales had the effect of greatly curtailing the movement of clay gravel from points on that line between Yemassee, S. C., and Augusta, Ga., to points in Georgia. It was indicated by an exhibit that such tonnage dropped from 81,601 tons in 1924 to 8,929 tons in 1925, and the testimony of a shipper of clay gravel located on this line at Ellenton, S. C., was to the effect that he is now unable to ship into Georgia. The inference is that this traffic has been lost by South Carolina to Georgia producers. The principal point of production of clay gravel in Georgia is at Norris, on the Georgia Railroad, and about 50 miles west of Augusta. An intervening producer at that point testified that prior to inauguration of the present Georgia rates he had no general line of rates and that before he could bid for a contract he was compelled to take up the question of establishment of rates with the car-

[fol. 34] riers and could not successfully compete at numerous Georgia points with shippers in South Carolina located on the Charleston & Western Carolina. While the present Georgia rates have benefited this producer's position in shipping to Georgia points, he contends that the scale is too high and pointed out that shippers in South Carolina on the line above mentioned now have an advantage of from 3 to 13 cents per ton over him in shipping through Savannah, Ga., to the coastal section.

There was some evidence to the effect that after August 1, 1925, traffic fell off from Montgomery and other Alabama points to destinations in Georgia as a result of the increases in rates resulting from the new Georgia scales. However, the same is shown as to movements between points in Georgia. A witness explained that this situation was due to the fact that consumers, realizing that rates were to be increased both State and interstate to Georgia points as a result of the Georgia commission's order, bought large quantities of these commodities for storage. Statistics of record appear to bear out this statement.

Various comparisons were submitted to show that the present Georgia scales are too low. On the other hand, numerous comparative rates were submitted on behalf of the Georgia commission to show the reasonableness of the Georgia rates. Whatever may be said against the present Georgia scales the evidence justifies the conclusion that they served to raise depressed rates which were moving a large part of the traffic both intrastate and interstate to Georgia destinations to a more consistent basis than had existed.

From the evidence introduced both by the Coast Line and other carriers it would seem that they are more concerned about the possibility of the extended application of the Georgia scales in the South than any result that their application within Georgia has had.

[fol. 35] As has been before stated, the Montgomery district produces more sand and gravel than any other district in the South, and the evidence goes to show that the Roquemore Company is perhaps the largest producer of these commodities in that territory. It was testified that this concern's chief markets for sand are Birmingham and Atlanta, and that outside of these two markets its shipments of sand are confined to hauls ranging from 50 to 75 miles.

Its shipments of gravel move much longer distances. The evidence indicates that to the north, Birmingham is its chief market. It ships gravel extensively to Georgia, Florida, and Carolina points. The president of this company testified that perhaps one-third of its gravel production goes to Florida. In shipping sand to Atlanta it encounters competition with numerous sand producers in Georgia. In shipping gravel to the States above mentioned it encounters competition with crushed stone producers in Georgia and in the Carolinas and with slag from the Birmingham district.

The traffic manager for the Chattanooga complainant stated that about 50 per cent of that firm's production of sand and gravel is consumed in the Chattanooga district, that the maximum length of movement of its sand shipments by rail in any appreciable volume is about 75 miles, and gravel about 150 miles, and that some gravel is shipped to Atlanta. This witness stated that his company is in competition with Montgomery shippers but that it could ship more extensively into Georgia if there existed a more favorable rate relationship with Georgia producers of sand and crushed stone. As a result of the revision of August 1, 1925, as shown by table above, in so far as relationship is concerned in rates to Atlanta, this complainant's differential of 25 cents over Montgomery on sand and 4 cents under on gravel was changed to 10 cents under the latter point on both commodities and the differential of Gaillard, [fol. 36] Ga., a large sand-shipping point, under Chattanooga was reduced from 45 cents to 20 cents.

At the hearing it was stated for the intervening Birmingham slag interests that there are numerous instances where the rates on slag from the Birmingham district to points in the States mentioned are on a specific commodity-rate basis with no corresponding rates on sand and gravel from the Montgomery district, and that with a view to composing past differences these interveners agree that the complainants are entitled to rates on gravel on a parity with those applicable to slag, and they are supporting the complainants' proposals in this case. Reference hereinafter to complainants will therefore include these interveners.

With the exception of the intervening Mississippi interests, all parties agree that the operating and transportation conditions over standard lines throughout the general terri-

tory here involved, with the exception of the Florida peninsula, and the reservation made by the Louisville & Nashville as to its old line between Etowah, Tenn., and Marietta, Ga., are similar.

The carriers advocate a uniform maximum mileage scale applicable to all thee commodities. They advocate the scale which they state is at present generally maintained by the trunk-line carriers in the South. It was stated for the Louisville & Nashville, however, that they never concurred in the mileage scales submitted by the trunk-line carriers in 1917 and 1921, respectively, to the Georgia and Alabama commissions, but in 1921 submitted a single-line scale higher than that proposed by the other carriers, which it is said is the normal distance scale that has been applied over the Louisville & Nashville system for many years, and that this line did not decide to join the other lines in the proposals now made until just prior to the hearing herein.

[fol. 37] With the exception of the Louisville & Nashville and the Coast Line, the other trunk-line carriers desire to reserve the right to depart from any maximum scale that may here be prescribed when in their judgment competitive conditions warrant such departures and such can be made without creating unlawful discriminations. The two carriers above mentioned state that it will be their purpose, in the event of approval of the carriers' proposed scale, to apply such scale literally with the possible exception that it might be desired to apply a group rate from Montgomery to take care of certain near-by producing points in that district. While we shall not prescribe minimum rates, we shall prescribe a scale which takes fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result, ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic.

The complainants and the Georgia commission advocate uniform scales, but propose a lower scale for certain of these commodities than for others. The Georgia commission advocates its present scales as reasonable for application throughout the territory here considered. Certain

intervening sand interests located at Rollo and Gaillard and crushed-stone interests located in Georgia and South Carolina favor a uniform scale on all of these commodities. The scale submitted on behalf of these interveners will hereafter be referred to as the "Brooker scale." The intervener, Atlanta Freight Bureau, also submitted a scale to apply uniformly on all of the commodities.

The Mississippi interests oppose the prescription of a general distance scale and especially oppose such a scale [fol. 38] in so far as Mississippi destinations are concerned. They assert that the cost of carrier operation in the Mississippi Valley is much less than in southern territory generally. They also show that there are numerous sand and gravel pits in the northern and eastern parts of Mississippi which they say supply practically all the needs of that State, and that there are no shipments of these commodities into Mississippi from Montgomery and Chattanooga. They assert that such shipments, if made, would necessarily pass through Mississippi territory where these commodities are produced. They prefer to leave the Mississippi situation as it is.

The following table shows the single-line scales submitted by the respective parties for trunk-line application:

	Cents	Cents	Cents	Cents	Cents
	Complainants' scale, description No. 1[1]	Present Georgia scale[1]	Scale proposed by Atlanta Freight Bureau	Carriers' proposed scale	Brooker proposed scale
	Cents	Cents	Cents	Cents	Cents
5 miles	45	50	40	45	45
10 miles	50	50	40	50	45
15 miles	55	50	50	54	50
20 miles	60	60	50	59	50
25 miles	65	60	50	63	55
30 miles	70	60	60	68	55
35 miles	70	70	60	72	60
40 miles	75	70	60	77	60
45 miles	75	70	70	81	65
50 miles	80	80	70	86	65
55 miles	80	80	70	90	70
60 miles	85	80	70	90	70
65 miles	85	90	80	95	75
70 miles	85	90	80	95	75
75 miles	90	90	80	99	80
80 miles	90	90	80	99	80

	Complainants' scale, description No. 1[1]	Present Georgia scale[1]	Scale proposed by Atlanta Freight Bureau	Carriers' proposed scale	Brooker proposed scale
85 miles	90	100	90	104	85
90 miles	95	100	90	104	85
95 miles	95	100	90	108	90
100 miles	95	100	90	108	90
110 miles	100	100	100	113	95
120 miles	100	110	100	117	100
130 miles	105	110	100	122	105
140 miles	105	120	110	126	110
[fol. 39]					
150 miles	110	120	110	131	115
160 miles	110	120	110	135	120
170 miles	115	130	120	140	125
180 miles	115	130	120	140	130
190 miles	120	130	120	144	135
200 miles	120	140	130	144	140
210 miles	125	140	130	149	145
220 miles	125	140	130	149	150
240 miles	130	150	140	153	160
260 miles	135	150	140	158	170
280 miles	140	160	150	162	180
300 miles	145	160	150	167	190
320 miles	150	160	160	171	200
340 miles	155	170	160	176	210
360 miles	160	170	170	180	220
380 miles	165	170	170	185	230
400 miles	170	180	180	189	240
420 miles	175	180	180	194	250
440 miles	180	180	190	198	260
460 miles	185	190	190	203	...
480 miles	190	...	200	...	...
500 miles	195	...	200	...	...

[1]Description No. 1, for application on chert in bulk, gravel (washed), in bulk, sand and washed gravel, in bulk, in mixed carloads, slag, crushed, granulated, or lump, in packages or in bulk, stone, broken, crushed, rubble and ballast, in bulk.

Description No. 2 includes gravel (not washed) in bulk, gravel, clay (i. e., clay gravel), in bulk, sand, in bulk, in straight carloads.

Rates proposed on commodities enumerated under description No. 2 are 10 cents per net ton less than the rates above shown as proposed on commodities enumerated under description No. 1. The commodities enumerated above under descriptions 1 and 2 correspond, with minor exceptions, to the two descriptions as now made under the present Georgia scales and the present Georgia scale shown above is likewise 10 cents per net ton higher than the present Georgia scale applicable to the other commodities.

The complainants' full scale as proposed runs to 1,020 miles. It increases 5 cents for each 20-mile block beyond 500 miles until it reached 720 miles, beyond which it increases 5 cents for each 30-mile block, the rate proposed on description 1 commodities for 1,020 miles being $3.

The evidence in these proceedings indicates that these commodities, especially washed gravel, crushed stone and [fol. 40] slag, move throughout southern territory much longer distances than they do in central and other territories.

The record affords no basis for determining the proportion of this traffic that moves in the territory considered over two or more lines. The indication is, however, that the joint-line movement is substantial. The carriers and most of the shipping interests agree that in the transportation of these low-grade commodities some recognition should be given to joint-line service by the prescription of differentials over the scale for single-line hauls. The intervener Atlanta Freight Bureau, however, is opposed to joint-line differentials on this traffic, and upon argument the Georgia commission also expressed similar opposition.

The differentials that were proposed at the hearing are as follows:

By complainants:

70 miles and under	15 cents
120 miles and over 70	10 cents
160 miles and over 120	5 cents

Present Georgia scales:

10 miles and not over 110	10 cents

By carriers:

10 miles and not over 360	28 to 13 cents
Over 360 miles	9 cents

The complainants state that they present their scales on the theory that, if adopted, they will move the traffic, be literally applied, and result in a harmonious rate level in lieu of what they describe as the "existing hodgepodge of competitive rates," whereas they contend that the carriers' scale is presented on the theory that it will fix merely the highest maximum limit, it being based on the highest scale applied by the carriers in the South, namely, that applicable to crushed stone in the Carolina territory. They assert that the carriers' scale is not proposed with the thought of its universal application but with the expecta-

tion that competitive point-to-point rates will be established wherever occasion seems to demand. Complainants commend the Georgia commission for taking the [fol. 41] initial step to get rid of what they term a discriminatory rate structure. They assert that the rates under the present Georgia scales are actually moving the traffic. Their objection to the Georgia scales is chiefly to the gradation. It is their contention that these scales progress not rapidly enough for the short hauls and too rapidly for the longer hauls. The result, they say, is a distinct advantage to Georgia producers, in that as their hauls are comparatively short, but a severe handicap to complainants in shipping to Georgia points in competition with Georgia producers. Complainants assert that their submitted scales, designed as they are with the thought of actual application, will go far to doing away with the establishment of low competitive rates, inasmuch as they give regard to competitive forces, so far as it is practicable, by being constructed with small breaks and a low curvature of progression. Complainants compare the carriers' scales on washed gravel and sand, which they say are applied from Montgomery to south Georgia territory, with the Georgia scales on washed gravel, crushed stone, and sand and show that for distances between 100 and 400 miles the rates from Montgomery on washed gravel range from 2 to 15 cents higher than the rates on washed gravel and crushed stone for the same distances between points in Georgia, and that as to sand they range from 12 to 25 cents higher. They also exhibit 41 Georgia destinations to which the distances from Montgomery range from 95 to 366 miles and show that the present rates on gravel from Montgomery to such points are higher than the rates on gravel and crushed stone for the same distances between points in Georgia under the Georgia scale by amounts ranging from 3 to 28 cents. They show that the differences as to sand rates to such points are greater because the carriers apply on interstate traffic to such points the same rates on all these commodities while the Georgia rates [fol. 42] are lower on sand. An exhibit of similar nature was introduced on behalf of the Chattanooga complainant. However, as has been previously pointed out, the rates from Montgomery and Chattanooga to Atlanta, which is by far the greatest consuming market in Georgia, as well as the

rates to various other points in Georgia, are now on the basis of the Georgia scales.

Complainants also show that rates on gravel from Montgomery to typical points in Mississippi, such as Meridian, Vicksburg, Jackson, Tupelo, and Gulfport, are higher than the contemporaneous rates on slag from Birmingham and group points to same destinations by amounts ranging from 18 to 72 cents. The distances to the first three points mentioned are approximately the same from both Montgomery and Birmingham. Montgomery is 58 miles nearer to Gulfport than is Birmingham, but the former pays a 20-cent higher rate on gravel than does Birmingham on slag in shipping to Gulfport.

Complainants assert that they arrived at their proposed single-line scale for application on washed gravel, crushed stone, and slag by taking the scale proposed by the trunk-line carriers on sand and gravel in 1917 to the Georgia and Alabama commissions, applying to the same the subsequent general increases and reductions, eliminating odd cents, and regrading to remove irregularities. This, they say, is the same scale that was approved in Meridian Traffic Bureau v. S. Ry. Co., 60 I. C. C. 5, for application on sand and gravel between Meridian, Miss., and certain points in Alabama. They show that the scale now proposed by the carriers ranges for distances between 35 and 400 miles from 3 to 29 cents higher than the scale proposed by them to the Georgia and Alabama commissions in 1917, after being subjected to subsequent general increases and reductions.

Complainants compare their proposed scales with numerous rates maintained by the carriers. The following [fol. 43] are illustrative: They show that on crushed stone their proposed scale for distances ranging from 152 to 206 miles is materially higher than the rates maintained by the Mobile & Ohio from Columbia Quarry and Krause, Ill., to various points located in Mississippi, Tennessee, Alabama, and Kentucky within the range of distances mentioned; that this line maintains a specific commodity rate of 95 cents on sand and gravel from Memphis to various points in Tennessee and Mississippi for distances ranging from 98 to 186 miles, as compared with complainants' proposed scale on gravel ranging from $1.05 to $1.20, and on sand from 95 cents to $1.10 for similar distances; that to numerous points

in Mississippi located between 100 and 140 miles from Memphis, Tenn., the Frisco maintains rates on gravel which are materially lower than complainants' proposed scale for the same distances and that the sand rates are about on a parity; that to numerous points in Tennessee, Mississippi, and Alabama for distances ranging from 5 to 158 miles the Southern Railway maintains rates on gravel which are somewhat higher than the complainants' proposed rates, but that to points in Alabama located between 158 and 271 miles from Memphis the Southern's rates are lower than complainants' proposed rates for those distances.

The Mississippi interests criticize the showing as to rates from Memphis to Mississippi points in that they assert there is little movement under such rates because the points of destination shown draw their chief supply of sand and gravel from near-by Mississippi points of production.

Complainants also show that specific rates are maintained by the Cincinnati, New Orleans & Texas Pacific on sand and gravel from Chattanooga to points in Tennessee between Hixon and Oneida for distances ranging from 9 to 129 miles which are not materially higher as a whole than the rates on gravel which complainants propose. They also show, [fol. 44] among others, rates on sand from La Grange, Tenn., of 79 cents to Huntsville and 90 cents to Decatur and Birmingham, Ala., for distances of 168, 143, and 236 miles, respectively, as compared with rates on sand from Chattanooga to the same points of $1.08, $1.60, and $1.31, respectively, for distances of 98, 122, and 143 miles. Under complainants' proposed scale the rates from La Grange to the points named would be $1.05, $1, and $120, and from Chattanooga 85 cents, 95 cents, and $1.

Various exhibits were submitted by complainants which show that if their proposed scales were here adopted and were subsequently approved by the Alabama commission, the result would be to increase materially the present rates from Alabama shipping points to numerous points throughout that State.

Sand is produced at Junction City, Ga., and at several other points in that vicinity located, respectively, on the Atlanta, Birmingham & Atlantic and the Central of Georgia. Junction City is located on both lines, being 223 miles from Birmingham over the former, and 193 miles over the latter.

These distances approximate the average distances from all these points to Birmingham as applied over the respective lines on which they are located. For some years past each of these lines has maintained a group rate of 79 cents from these points to Birmingham, which is the same as the rate maintained on sand from the Montgomery district to Birmingham, 97 miles, the short-line distance over the Louisville & Nashville. This 79-cent rate from the Junction City district is assailed in No. 17689 as being unreasonably low. Under complainants' proposed scale on sand the rate from Junction City to Birmingham over the Atlanta, Birmingham & Atlantic would be $1.20, over the Central of Georgia $1.10, and from Montgomery to Birmingham 85 cents.

[fol. 45] Intervening sand producers located at Junction City, Howard, and Morning Star, Ga., three of the points taking the 79-cent rate to Birmingham, stressed the importance to them of the continued maintenance of a rate parity with Montgomery in shipping sand to Birmingham. One of these interveners stated that from 90 to 95 per cent of his sand production is shipped to Birmingham, and another that one-third of his production goes to that point. They say that they have made investments at their plants on the theory of the continued maintenance of a rate parity with Montgomery and that the discontinuance of such a parity will result in great loss to them.

The Atlanta, Birmingham & Atlantic and the Central of Georgia, while concurring in the carriers' proposed scales, yet join with the shippers in urging the continuance of a parity of rates as between the Junction City district and Montgomery to Birmingham. They admit that the 79-cent rate is comparatively low but assert that it affords some profit in view of the circumstances under which the traffic is handled. They assert that this traffic moves from the Junction City district to Birmingham in open-top equipment that would otherwise return empty. The Atlanta, Birmingham & Atlantic shows that it has a preponderance of empty movement to Birmingham as a result of the eastbound loaded movement from that point of various commodities such as coal and iron and steel articles. That line shows that this 79-cent rate yields car-mile revenue from Junction City of 18.7 cents based on a loading of 50 tons, which is compared with its average car-mile revenue for

1924 of 20.76 cents. It shows that its traffic density is much lower than that of other trunk lines serving the South, and its need of traffic. It points out that the yearly tonnage of this sand moving over its line from the Junction City district to Birmingham produces an annual revenue, based on [fol. 46] the 79-cent rate, of approximately $39,500, which revenue it asserts would be lost if the rate parity with Montgomery were destroyed.

The complainants, however, point to the situation above outlined as a striking example of the publication of low competitive rates by carriers to enable their shippers to overcome disadvantages in distance in reaching markets of large consumption, and this emphasizes, they say, the need for the establishment of a scale such as complainants advocate, which they contend, if actually applied, will accord every shipper every right which he can lawfully claim.

As has been heretofore pointed out, the establishment of numerous low competitive rates by the carriers on these commodities has had the effect of breaking down to a considerable extent their interstate distance scales. The situation above discussed as to the Junction City district well portrays the general situation which has resulted in dissatisfaction and apparently had much to do with the filing of these complaints.

The trunk-line carriers submitted numerous exhibits in support of the reasonableness of their proposed single-line scale and to show that the scales proposed by complainants as well as the present Georgia scales are too low. They attempt to show that the rates from Montgomery and Chattanooga, generally speaking, are on the basis of the carriers' proposed scale, which scale, they also undertake to show by numerous exhibits, is also in effect generally throughout southern territory. These exhibits also purport to show numerous instances where rates are maintained on a higher basis than the scale. They also compare their proposed scale with numerous interstate scales maintained on these various commodities in Alabama, Tennessee, Kentucky, Virginia, North Carolina, and South Carolina. Some of these scales are shown as being higher than their proposed [fol. 47] scale and others higher in part and lower in part. They also compare their proposed scale with the averages of the present interstate scales and intrastate scales main-

tained on these commodities by the principal southern carriers, which comparison shows that their proposed scale is lower in numerous instances than the respective averages of the scales referred to. The Louisville & Nashville's present normal scale, as has been stated, is higher than the carriers' proposed scale, and this line shows by numerous comparisons the substantial concession in rates it makes in now concurring in the other trunk-line carriers' proposal. The Coast Line also introduced an exhibit which purports to show that, exclusive of the Pocahontas region and Georgia intrastate movements, 321,826 tons of sand, gravel and crushed stone moved from points on that line during the months of March, June, and September of 1924 and 1925, which tonnage produced a revenue of $351,207, and that if the rates as now proposed by the carriers were applied to that tonnage the result would be to increase the above amount by $3,414, and that if the Georgia rates were applied the result would be a reduction of $51,047.

Evidence was offered purporting to show that the carriers' proposed scale is lower than rates applying between numerous points in central territory, and comparisons are made with numerous rates and scales prescribed or found not unreasonable by us between various points in southern, central, trunk-line and southwestern territories. They refer to the fact that in Sand and Gravel to the Southeast, 83 I. C. C. 436, we approved rates on sand and gravel from stations on the Charleston & Western Carolina to points in the Southeast, which rates are on the same basis as those here proposed.

The following table, compiled from exhibits submitted by the carriers, compares single and joint line scales pro-
[fol. 48] posed by them with the scales prescribed on sand, gravel, crushed stone, and slag in Memphis Southwestern Investigation, 77 I. C. C. 473, and which the carriers say apply generally throughout the Southwest, and with the scales prescribed in Penn. Sand & Gravel Prod. Asso. v. B. & O. R. R. Co., 104 I. C. C. 717, for application between points in western Pennsylvania and points in Ohio, West Virginia, and New York.

Distance	Carriers' proposed scales		Memphis Southwestern scales		Scales prescribed in 104 I. C. C. 717	
	Single line Cents	Joint line Cents	Single line Cents	Joint line Cents	Single line Cents	Joint line Cents
5 miles	45	...	60	70	60	80
10 miles	50	77	60	70	60	80
15 miles	54	81	60	70	60	80
20 miles	59	86	60	70	60	80
25 miles	63	90	70	80	70	90
30 miles	68	95	70	80	70	90
35 miles	72	99	70	80	70	90
40 miles	77	104	70	80	70	90
45 miles	81	108	80	100	80	100
50 miles	86	113	80	100	80	100
55 miles	90	117	80	100	80	100
60 miles	90	117	80	100	80	100
65 miles	95	117	100	110	90	110
70 miles	95	117	100	110	90	110
75 miles	99	122	100	110	90	110
80 miles	99	122	100	110	90	110
85 miles	104	126	110	130	100	120
90 miles	104	126	110	130	100	120
95 miles	108	131	110	130	100	120
100 miles	108	131	110	130	100	120
110 miles	113	135	110	140	110	130
120 miles	117	140	130	140	110	130
130 miles	122	144	130	140	120	140
140 miles	126	149	140	140	120	140
150 miles	131	153	140	140	120	140
160 miles	135	158	140	160	130	150
170 miles	140	158	140	160	140	160
180 miles	140	158	160	170	140	160
190 miles	144	162	160	170	140	160
200 miles	144	162	160	170	...	...
210 miles	149	167	160	180	...	...
220 miles	149	167	160	180	...	...
240 miles	153	176	170	200	...	...
260 miles	158	176	180	200	...	...
[fol. 49]						
280 miles	162	176	200	210	...	...
300 miles	167	180	200	210	...	...
320 miles	171	185	210	220	...	...
340 miles	176	189	210	220	...	...
360 miles	180	194	230	240	...	...
380 miles	185	194	230	240	...	...
400 miles	189	198	230	240	...	...
420 miles	194	203	240	250	...	...
440 miles	198	207	240	250	...	...
460 miles	203	212	270	270	...	...
480 miles	...	...	270	270	...	...
500 miles	...	...	270	270	...	...
520 miles	...	...	290	290	...	...
540 miles	...	...	290	290	...	...
560 miles	...	...	310	310	...	...
580 miles	...	...	310	310	...	...
600 miles	...	...	310	310	...	...

Respecting the scale prescribed in the Meridian Traffic Bureau case, supra, the carriers say that it moves prac-

tically no traffic and, although it has been in effect for several years, its application has never been extended beyond the territory for which it was originally prescribed.

They show that at 220 miles their proposed single-line scale earns 6.8 mills per ton-mile and at 460 miles 4.2 mills, and that under their proposed joint-line scale the earnings would be 7.6 and 4.6 mills, respectively. Beyond 110 miles the Georgia commission's single and joint line scales are the same, and the earnings per ton-mile for the distances shown are, on description No. 1 commodities, 6.4 and 4.1 mills, and on description No. 2 commodities, 6 and 3.9 mills, respectively. It was stated for the Coast Line that any traffic that pays less than 7 mills per ton-mile, especially for distances as short as 200 miles, is not considered very desirable. However, the car-mile earnings under the car-
[fol. 50] riers' proposed rates above referred to for 220 and 460 miles, computed on the basis of 50 tons per car, are 33.8 and 22 cents, respectively.

The carriers support the reasonableness of their joint-line differentials with numerous comparisons, including, in addition to the citation of cases above shown, other cases wherein we have fixed joint-line differentials.

The Georgia commission submitted numerous comparisons between its scales and the rates maintained between numerous interstate as well as intrastate points in the Southeast. These comparisons show that there are numerous rates, both interstate and intrastate, maintained throughout the Southeast which are on a lower basis than the Georgia scales. The intrastate scales in North Carolina and South Carolina are, generally speaking, higher than the Georgia scales.

As heretofore stated, the scale referred to as the "Brooker scale" is submitted on behalf of certain intervening sand interests located at Rollo and Gaillard and crushed-stone interests located in Georgia and South Carolina.

Rollo and Gaillard are important sand-producing points. They are approximately 95 miles from Atlanta, their chief market. The short-line distance from Montgomery to Atlanta is 175 miles over the Western Railway of Alabama and the Atlanta & West Point. It is pointed out on behalf of these intervening sand producers that on August 26, 1920, they had a differential of $1.12 under Montgomery on

sand to Atlanta, that by subsequent successive reductions in the Montgomery rate this differential was lessened, becoming on April 21, 1921, 62 cents; on September 8, 1921, 37 cents; on July 1, 1922, 33 cents; and that from July 18, 1922, to August 1, 1925, the differential was only 20 cents, the rates being 77 cents from Montgomery and 57 cents [fol. 51] from Gaillard and Rollo. Evidence was introduced to show increased movement from Alabama during the period this 20-cent differential was in effect. As has been shown, on the date last mentioned and as a result of the Georgia commission's order the rates on sand became $1.20 from Montgomery and 90 cents from Rollo and Gaillard. These interveners point out that the present rate from Montgomery to Atlanta is the same as was in effect on June 24, 1918, whereas the rate from Rollo and Gaillard has been increased 60 cents. They criticize the other scales here proposed, their contention being that they provide rates which are too high for the shorter hauls and too low for the longer hauls. They strenuously oppose the scales submitted by complainants and point out that on sand to Atlanta complainants' proposal would reduce the differential of Montgomery over Rollo and Gaillard to 20 cents.

They refer to the fact that sand is produced as a by-product only in the Montgomery district and to the evidence produced which shows that complainant located there is underselling other sand producers. They say that complainants' scale is offered for the purpose of enabling the Montgomery complainant to reach distant and large consuming markets and to undersell producers located much nearer to such markets who are unable to meet by-product prices. Such a scale, they assert, if adopted, would seriously handicap these interveners in markets to which they now have the natural advantage in distance.

The evidence submitted on behalf of the intervening crushed-stone interests is of similar import to that submitted for the intervening sand producers. Those located near Atlanta say that notwithstanding their advantage in freight rates to Atlanta as compared with rates on gravel from Montgomery and Chattanooga and on slag from Birmingham, yet, due to higher cost of production of crushed stone, these interveners are unable to do any substantial [fol. 52] business in the Atlanta market in competition with gravel and slag for highway construction from the

points above mentioned. As an example of this competition, they state that the highway from Stone Mountain to Scottdale, Ga., was built with Birmingham slag, notwithstanding that crushed-stone plants are located within a few miles of this highway. They say that because of the smaller sizes of crushed stone required in building construction they make no attempt to compete for this business in the Atlanta market with gravel and slag produced at the points referred to.

The South Carolina crushed-stone interests likewise complain of their difficulty in doing business in near-by territory in competition with Montgomery and Chattanooga gravel and Birmingham slag. They refer to the loss of contracts and state that Florida was once their best market for crushed stone but that they are now shipping very little to that State due to their inability to meet the competition of gravel and slag from the points mentioned. These crushed-stone interests contend that the complainants' proposal with its comparatively low long-haul rates would, if adopted, prevent crushed stone from competing in territory as much as 50 miles from their plants.

On behalf of these interveners various decisions are cited wherein we have held to the effect that it is not within our power to equalize economic conditions or to place one market in a position to compete on equal terms with another market as against natural advantages. They contend that the proceedings should be dismissed but state that, in the event a scale is prescribed, the "Brooker scale" represents their proposal. This scale is constructed on the theory of first determining a terminal charge for the service performed by the carriers or carrier at point of origin and point of destination. A terminal charge of 40 [fol. 53] cents is used in constructing this scale. There is then added to such terminal charge an amount for road-haul service which will produce for the latter service for all distances 5 mills per ton-mile. The full scale starts at 45 cents for the first 5 miles.

It will be noted that this scale is lower than the carriers' proposed single-line scale up to 210 miles, beyond which distance the Brooker scale is the higher, and when it reaches 440 miles it is 62 cents higher than the carriers' proposed scale. Up to 110 miles it is lower than the com-

plainants' proposed washed gravel and slag scale, but at 140 miles it exceeds the same by 5 cents, and at 440 miles by 80 cents. The Brooker scale is lower than the Georgia washed-gravel, slag, and crushed-stone scale up to 150 miles. At 210 miles it is 5 cents, and at 440 miles 80 cents, higher. In other words, the Brooker scale for the longer distances far exceeds any other scale here considered.

In support of this scale it is pointed out that General Order No. 28 increased the rates on these commodities 20 cents per ton instead of 25 per cent, which had the effect of increasing the short-haul rates in greater proportion than the rates for the longer hauls. This, it is contended, brought about rates which are too low for the longer hauls. It is next contended that these commodities are given but little through service, that they usually move in local trains, and that at each division point an additional terminal service is performed with frequent interchange between different carriers. It is argued that it makes no difference, therefore, whether the road-haul is 5 miles or 500 miles, that the actual cost per mile of handling this traffic is the same, and that this cost added to the terminal charge should determine the rate.

The Atlanta Freight Bureau criticizes the various scales here submitted both as to their level and progression. It is shown that as a result of the present Georgia scales the carriers have received a substantial increase in their revenue on both interstate and intrastate shipments to the [fol. 54] Atlanta district. This intervener proposes its scale on the theory that it presents a better level and a more logical progression than the other submitted scales. This scale is, it states, the one that the consumers of these commodities favor.

The interveners, Colbert Limerock Asphalt Company and Alabama Rock Asphalt Company, are producers of asphaltum limestone at Colrock and Margerum, Ala., respectively. They ask that whatever scale of rates is prescribed in these proceedings the same scale be made applicable to their commodity. This commodity has an asphaltum and a bitumen content and is shipped in its crude state and subjected to a further manufacturing process at destination before it can be used as a paving material for highways and streets. The testimony shows that it sells at from $2.50 to $3.50 per ton at point of origin. Rating and rates on this commodity

from the point above mentioned to points in southern and central territories and to points in various States located west of the Mississippi River are involved in No. 17805, now pending, and this commodity will not be further considered in these proceedings.

The present method of making rates on these commodities to and from the Florida peninsula is by combination of factors to and from Jacksonville. Except on slag, these rates were originally combinations of local rates, but they are now subject to the so-called Kelly combination rule, so that the through rates are 30 cents less than the combination of locals on Jacksonville. Through rates on slag are made by deducting 12 cents from each of the factors. The carriers desire to continue the Jacksonville combination basis. They cite present rates on sand and gravel from Montgomery to representative Florida destinations ranging from $2.69 to Gainesville, 400 miles, to $4.32 to Miami, 735 miles. The earnings per ton-mile under these rates range from 6.7 to 5.6 mills, and the carriers offer this as [fol. 55] proof that the rates are now on a low basis and that no reductions are justified. However, they themselves propose in other parts of southern territory a single-line rate of $1.89 and a joint-line rate of $1.98 for 400 miles, and no sufficient reason has been shown why the rate between Montgomery and Gainesville for the same distance should be 40.2 per cent higher than the single-line rate and 33.8 per cent higher than even the joint-line rate, a large part of the haul being through territory in which the standard scale would apply.

In Southern Class Rate Investigation, 100 I. C. C. 513, 624, we said:

> The present method of making rates on the Jacksonville combination to and from the Florida peninsula is merely an arbitrary device for enhancing revenue. Ordinarily there is no change of carriers at Jacksonville and much of the traffic does not even pass through that point.

The subsequent construction of new railroad lines has made these remarks even more appropriate than they were then. In that proceeding we prescribed certain arbitraries to be added to the basic scale for that part of the haul within

the peninsula south of the Seaboard Air Line from Jacksonville to River Junction; and that is the method of constructing rates to and from the peninsula which complainants favor here. In the original report in that investigation we made the arbitraries 10 per cent of the basic scale, but in a subsequent report, 109 I. C. C. 300, we increased them to 15 per cent. In the latter report we also said, at page 308:

In the case of this Florida traffic the carriers also stress the revenue loss which they fear may result from the subsequent application to commodity rates of the principles followed in prescribing class rates. We are not here dealing with commodity rates. For the present it is sufficient to say that if and when we are called upon to fix maximum reasonable commodity rates we shall take into consideration all pertinent factors, including the revenues of the carriers.

In changing from a system of rate making which has prevailed for many years to a new method, it is reasonable that consideration should be given, particularly in the case [fol. 56] of commodities moving in volume at relatively low rates, to the effect which an abrupt and radical change in rate level might have upon carrier revenues; and there is the more reason for such consideration in this instance in view of the heavy burden which the carriers have recently assumed in the form of new railroad construction to meet Florida needs.

The record here, however, in so far as it pertains to rates into Florida, is very meager. At the hearing no producers in Florida of any of these commodities were represented, and the evidence tended to show that, with the exception of sand, they are not produced in Florida to any appreciable extent. At the argument, however, counsel for the carriers stated that it had since been learned that all of these commodities, with the exception of slag, are produced in Florida in substantial quantities and that they are shipped throughout the State in competition with shipments from points without the State.

While, therefore, we are satisfied that the through rates to points in the Florida peninsula ought not to be made upon the Jacksonville combinations, we shall not, in view of the state of the record, at this time undertake to make any specific finding or order with respect to these rates. Upon

petition the proceedings, so far as they relate to such rates, may be reopened in order that an adequate and satisfactory record dealing with this particular situation may be made. Or new complaints, possibly covering these issues in a more comprehensive way, may be presented.

The carriers have insisted throughout these proceedings that the traffic here considered moves throughout southern territory largely under rates that are on the level of their proposed scale. What proportion of this traffic is moving in the South on the carriers' interstate scales as compared with that moving on much lower competitive rates cannot be accurately determined from this record. It does show, [fol. 57] however, that the carriers have established numerous rates between many of the most important producing points and consuming markets which are much lower than their general distance scales. It can hardly be disputed that these competitive rates have moved and are moving a large volume of traffic, that the prevailing distance scales are not representative of the general rate level, and that this is a situation which had much to do with the bringing of the complaints now before us.

Proposals of the Short Lines

The American Short Line Railroad Association presented a list of so-called short lines for which a special basis of rates is here sought because of their limited traffic and financial condition. They are shown in Appendix B. The Atlanta, Birmingham & Atlantic, which in other cases has been classed as a weak line, was represented but made no request for special treatment. No objection was made to according short lines special treatment. However, our findings upon this matter hereinafter made will relate only to those short-line carriers parties to these proceedings in whose behalf special treatment was specifically sought.

A scale of single-line rates proposed on behalf of the short lines represented ranges from 11 cents for 5 miles to 33 cents for 300 miles higher than the carriers' proposed standard single-line scale. Their proposed joint-line scale is also higher by approximately the same amounts than the proposed joint-line scale.

Division of Commodities as to Rates

It has been shown that the complainants are proposing a basis of rates on washed gravel, crushed stone, and slag, which is 10 cents per net ton higher than that proposed [fol. 58] on sand, clay gravel, and unwashed gravel. This division is in accord with that which prevails under the present Georgia scales. Complainants do not contend that there is any difference in transportation conditions or characteristics as they apply to the movement of these respective commodities. They base their contention for a lower basis of rates on sand, clay gravel, and unwashed gravel chiefly on the fact that they have a somewhat lower range of values than do the other commodities and upon the inability of sand and clay gravel to move long distances because of the competition prevailing between the numerous points producing these commodities. They also say that sand does not complete with the other commodities. The carriers and various intervening crushed-stone interests as well as certain Georgia sand producers oppose this request of complainants and favor one basis of rates for all the commodities. An intervening sand producer with plants at Rollo and Gaillard testified that—

> Irrespective of the fact that I produce sand only, I do not feel that I can consistently ask this commission to prescribe lower rates on sand than on the other road-making materials.

As has been previously stated, the evidence in these proceedings shows that on the whole there is actual and active competition between all the various commodities.

In the fixing of rates on these commodities in the past we have not recognized the existence of a difference in the transportation characteristics, or in any other factors entitled to consideration in the fixing of rates, such as to warrant a different basis of rates on some as distinguished from others. Where scales have been prescribed in any territory they have been rated the same. See Sand and Gravel to the Southeast, supra, and Penn. Sand & Gravel Producers Asso. v. B. & O. R. R. Co., supra. The evidence presented in these proceedings is not sufficient to warrant a departure from this practice.

[fol. 59] Minimum Weight

All parties to these proceedings agree that a uniform minimum weight should be prescribed on these commodities for application throughout the territory here considered and, with the exceptions noted below, all agree that it should be 90 per cent of the marked capacity of the car, except that where the car is loaded to full visible capacity actual weight should govern. The Georgia commission favors the fixing of the minimum at a definite amount. Certain other interveners located in Georgia take the position that if 90 per cent of the marked capacity of the car is fixed it should be with reference to the marked capacity of the car ordered by the shipper.

General Conclusions

As has been indicated, there is quite general agreement of both shippers and carriers that operating and other transportation conditions on standard lines throughout the territory here involved, with exception of the Florida peninsula, are sufficiently similar to warrant a uniform rate level on these commodities. This was the conclusion that we reached with respect to all of southern territory, other than the Florida peninsula, in Southern Class Rate Investigation, supra, and also in Brick and Clay Products in the South, 88 I. C. C. 543, and Fertilizers between Southern Points, 113 I. C. C. 389. In those proceedings no distinction was sought in rates as between branch lines and main lines, and none is sought here. We are of the opinion that there should be a uniform rate level upon the commodities in issue over standard lines within the territory involved, excepting the Florida peninsula. The special contention of the Louisville & Nashville that higher rates are justified upon its lines between Etowah and Marietta is hereinafter considered.

For the reasons indicated in the cases above cited, which are supported by the record here, we are also of the opinion [fol. 60] that the short lines listed in Appendix B are entitled to special rate treatment, and that this may be afforded by adding, in all instances where the haul is in whole or in part over such a short line, 25 cents to the rate determined by the scale herein prescribed for standard lines.

In this connection the following statement from Southern Class Rate Investigation, supra, at page 655, is pertinent:

> While the matter of divisions of joint rates is not under consideration in this proceeding, we deem it not inappropriate to express the view that where joint rates between standard lines and weak or short lines are made by the use of arbitraries in the manner above indicated, it is a fair presumption that the division of the standard line should not be greater than it would receive if it were dividing the same rate minus the arbitrary with another standard line, and that the benefit of the arbitrary should accrue wholly to the weak or short line.

In the case just cited we reached the conclusion that no sufficient reason had been shown for joint-line arbitraries, but that the single scale to be prescribed should be made somewhat higher than if its application were to be confined to single-line routes. A similar conclusion was reached in Fertilizer between Southern Points, supra. As was there pointed out, a single scale without joint-line arbitraries has great practical advantages, particularly in simplicity of tariff construction, and can be justified upon other grounds as well. In the case of the commodities under consideration, however, there is perhaps more basis for point-line arbitraries than in the case of any other form of traffic. The very low value of these commodities makes the cost of transportation a most vital matter, and it may well be that even the slight increase in rate level over the single-line routes which the elimination of joint-line arbitraries would entail ought to be avoided. Undoubtedly the greater proportion of this traffic moves over such routes. At all events we have reached the conclusion that in the case of these commodities joint-line arbitraries may reasonably be permitted, but should be of lesser amounts and disappear at an earlier stage of the scale than the carriers propose. [fol. 61] But this should not be construed as an indication that we favor joint-line arbitraries in the case of traffic of higher grade.

Turning to the level of the scale, all of the rates which have been proposed in these proceedings, whether by shippers or by carriers, are relatively low as compared with the going rates on most other forms of traffic. The com-

modities, as we have seen, are of unusually low value. It is doubtful indeed whether any traffic moves which is worth less at the point of production than clay, gravel, or sand. In the price to the consumer the cost of transportation is a heavy factor. Moreover, these commodities load very heavily, move in cars of relatively low tare weight as compared with the load, are not susceptible to damage, and normally move in considerable volume without unusual switching operations at either end of the haul and without anything in the nature of special service. No cost studies covering their movement have been supplied, and we lack that aid in passing upon the rates. Our judgment must, therefore, chiefly be guided by rate comparisons, with the scales proposed by the carriers fixing the maximum limit which under the circumstances can reasonably be considered. In arriving at our conclusion, we have taken into consideration those scales, those proposed by the carriers in 1917, those fixed by the Georgia commission, those proposed by complainants and interveners, those which we have prescribed in this and other territory in prior cases, and the prevailing level of the rates which now move the traffic. However we have heretofore adverted to the fact that this traffic moves longer distances in the South than it does in other territories. The carriers apparently recognize the importance of having rates that will permit the continuance of the long-haul movement of this traffic and have proposed single-line rates for movements beyond 400 miles, the general level of which does not here appear unreasonable. Viewing the rates proposed by the carriers for [fol. 62] these longer hauls as the maximum basis which should here be considered, we find that for distances beyond 400 miles they have on the whole justified the reasonableness of the general level of their proposed single-line rates. These proposed rates, however, are not properly graded and in order to have a harmonious scale regrading has been necessary. This will bring about slight reductions in some instances and slight increases in others. It is to be understood that the rates herein approved for the longer hauls are made in the light of the peculiar circumstances surrounding the movement of this low-grade traffic in the South and are not to be taken as a precedent in fixing reasonable rates on other traffic.

We find that the rates maintained on sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, by defendants in No. 17699 from Montgomery, Ala., and by defendants in No. 17764 (Sub-No. 1) from Chattanooga, Tenn., and by defendants in No. 17763 from Montgomery and Chattanooga, to destinations in Georgia and Mississippi and that the rates maintained by respondents in No. 17517, for the interstate transportation of sand gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other States in southern territory, except Florida, are and for the future will be, unreasonable to the extent that they exceed, or may exceed, rates set forth in the following tables, subject to a minimum weight of 90 per cent of the marked capacity of the car, except that when car is loaded to full visible capacity actual weight shall govern:

[fol. 63] Table A

Distance scales for interstate application are over standard or trunk lines. Rates are in cents per net ton, as follows:

Distance	Single line rate Cents	Joint-line rate Cents
10 miles and under	50	65
20 miles and over 10	55	70
30 miles and over 20	60	75
40 miles and over 30	70	85
60 miles and over 40	80	95
80 miles and over 60	90	105
100 miles and over 80	100	115
125 miles and over 100	110	125
150 miles and over 125	120	135
175 miles and over 150	130	140
200 miles and over 175	135	145
230 miles and over 200	140	150
260 miles and over 230	150	160
290 miles and over 260	160	170
320 miles and over 290	165	175
360 miles and over 320	175	180

Distance	Single-line rate Cents	Joint-line rate Cents
400 miles and over 360	185	190
440 miles and over 400	195	200
480 miles and over 440	205	210
520 miles and over 480	215	215
560 miles and over 520	225	225
600 miles and over 560	235	235
640 miles and over 600	245	245
680 miles and over 640	255	255
720 miles and over 680	265	265
760 miles and over 720	275	275
800 miles and over 760	285	285

Table B

When the transportation is in whole or in part over either of the so-called short lines shown in Appendix B, rates are to be determined as follows:

Apply the rates applicable under appropriate scale or scales above set forth in Table A, plus the following arbitrary which is to accrue solely to the short line: Arbitrary 25 cents per net ton.

In determining whether hauls are single-line or joint-line, carriers under common control or management shall be regarded as one line. All of the defendants and respondents are to be classed as standard lines for the purpose of these findings, except those short lines for which special rate treatment is herein accorded.

In computing distances for the application of the foregoing rates, we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading.

We further find that the rates maintained on gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, by defendants in No. 17699 (Sub-No. 1) from Montgomery, Ala., and by defendants in No. 17764 from Chattanooga, Tenn., to destinations in Georgia and Mississippi are, and for the future will be, unduly preju- [fol. 64] dicial to complainants at Montgomery and Chattanooga, and unduly preferential of shippers of slag, in

carloads, from Birmingham, Gadsden, Anniston and other slag-producing points in northern Alabama, and from Copperhill, Tenn., to the extent that they exceed, distance considered, the rates contemporaneously maintained by said defendants on slag, in carloads, from the Alabama points above referred to and from Copperhill, Tenn., to the same destinations, subject to the application of the rates under the scales above set forth as maximum rates.

We have heretofore discussed the 79-cent rate maintained by the Atlanta, Birmingham & Atlantic and the Central of Georgia on sand from points in the Junction City, Ga., district mentioned in No. 17689, to Birmingham. It is admitted to be a relatively low rate and, as has been stated, is maintained in order that the Junction City district shippers may ship sand to Birmingham on a parity with Montgomery shippers. The rates between points in Alabama are not in issue in these proceedings and the above-named carriers serving the Junction City district and the shippers there located strongly urge that we do not disturb the present parity of rates, at least until the rates from Montgomery to Birmingham are revised. To do so, they assert, will mean serious loss to the Junction City district shippers as well as the carriers. We are impressed with this contention and in view of the situation disclosed we find that we are not here justified in disturbing the present adjustment. Under the circumstances disclosed, No. 17689 will be dismissed without prejudice to the right of complainants to seek a reopening of same in the event that as a result of these proceedings the intrastate rates between points in Alabama are revised to the level herein approved for interstate application and the Atlanta, Birmingham & Atlantic and the Central of Georgia do not follow with a like revision of the interstate rates from the Junction City district to Birmingham.

[fol. 65] Fourth-section Relief

No fourth-section applications were heard with these proceedings and no relief from the provisions of the fourth section will here be authorized in connection with the rates herein approved. Such carriers as may desire fourth-section relief may file with us appropriate applications for our determination.

Investigation and Suspension Docket No. 2470.

By the schedules now under suspension in No. 2470 the Louisville & Nashville proposes certain increases in rates on slag, in carloads, from Copperhill to points on its line in Georgia. Copperhill is located on what is known as the old main line of the Louisville & Nashville extending from Marietta, Ga., to Etowah, Tenn. The new line lies west of the old line and is a part of the present main line extending from Atlanta through Marietta and Cartersville, Ga., to Etowah and northward. Copperhill is 48 miles south of Etowah, the distance from Atlanta being 116 miles via the old line and 185 miles via the new.

Cartersville is on the new line 48 miles northwest of Atlanta. Keithsburg is on the old line 29 miles north of Marietta. The present rate on slag from Copperhill to points between Cartersville and Atlanta, both inclusive, is $1.02 for an average distance via Etowah, the route over which the traffic moves, of 159.5 miles. The $1.02 rate likewise applies from Copperhill to Keithsburg and points beyond on the old line intermediate to Marietta, and traffic to such points moves over the old line for an average distance of approximately 80 miles. By the schedules under suspension it is proposed to increase the $1.02 rate to all points, Cartersville to Atlanta, to $1.26, except that $1.30 is proposed to Atlanta and $1.17 to Marietta and two other near-by points. To Keithsburg and other points interme- [fol. 66] diate to Marietta on the old line, the suspended schedules propose to increase the $1.02 rate to $1.17. The Louisville & Nashville, as has been stated, now concurs in the scale of rates proposed by the other trunk-line carriers in these proceedings. Therefore in lieu of the suspended rates it now proposes that rates on slag from Copperhill to the points above described be constructed on the basis of the carriers' proposed single-line scale with distance to the points Cartersville to Atlanta computed via Etowah and the new line. Under this proposal the rates to the points last mentioned would be from 5 to 14 cents higher than those now under suspension. To Keithsburg and points intermediate to Marietta the proposal would result in rates lower than the rates under suspension and would slightly reduce some of the present rates.

The distances from Copperhill to Cartersville and points south thereof on the Atlantic division are greater via Eto-

wah and the new line than they are via the old line and Marietta but the Louisville & Nashville introduced evidence to show that transportation over the old line is attended with many difficulties in that it passes through a mountainous country and has heavy grades and many sharp curves. It states that the route from Copperhill via Etowah to points located on the Atlanta division and beyond is a more practicable one and it desires to continue to use and to compute distances via this route on traffic to and from these points.

As has been shown, the distance from Copperhill to Atlanta via the old line is 116 miles as compared with 185 miles via Etowah and the new line. To Cartersville the distances from Copperhill are 123 and 137 miles over the respective routes. The carriers' proposed single-line scale would result in rates to Atlanta and Cartersville, computings the distances via Etowah, of $1.44 and $1.26, as compared with $1.17 and $1.22, computed on the distances via the old line. Under the scale on slag herein approved the [fol. 67] rates computed on the distances via the old line would be $1.10 to both Atlanta and Cartersville, and 90 cents to Keithsburg and other points not more than 80 miles distant from Copperhill, and $1 to those points between 80 and 100 miles from the latter point.

The evidence shows that traffic moving between points intermediate to Etowah and Marietta on the old line is now routed over the old line. In other words, a shipment originating on the old line at Cambria, Tenn., which is 3 miles south of Etowah and 45 miles north of Copperhill, destined to Westoak, on the old line 4 miles north of Marietta, would move over practically the entire length of the old line.

We have heretofore in these proceedings approved a definite rule for computing distances. No doubt instances could be cited by other carriers parties to these proceedings which would have as much merit as the situation here presented by the Louisville & Nashville. We are of the opinion that no exception from the approved rule should here be authorized. This question was fully discussed in the second supplemental report in Southern Class Rate Investigation, 113 I. C. C. 200, and we adhere to the conclusions there expressed.

We find that the proposed schedules have not been justified. Their cancellation will be required without prejudice to the right of respondent to file new schedules establishing rates on slag from Copperhill to the destinations involved on the basis of the standard single-line basic scale of rates on slag hereinbefore approved in this report, distances to be computed via the shortest route.

Intrastate Rates

The changes in rates both intrastate within Georgia and interstate to Georgia brought about by the Georgia commission's order of February 25, 1925, have been fully discussed. [fol. 68] We have been impressed with what appears to us to have been the broad-minded attitude taken by the Georgia commission when it undertook the revision of these rates which resulted in its order of February 25, 1925. This order as we have seen resulted in raising many depressed intrastate rates applying between important producing and consuming points, and subsequently had the effect of bringing about substantial increases in important depressed interstate rates. Considering the results brought about by this order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any order in No. 17517 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved.

Mississippi

In No. 17763 it is alleged, among other things, that the rates maintained by defendants therein named on sand and

gravel from Montgomery and Chattanooga to destinations in Mississippi are unreasonable and unduly prejudicial in favor of intrastate shippers of the same commodities be-[fol. 69] tween points in Mississippi. The reasonableness of the interstate rates to Mississippi points in so far as involved has been considered.

At the hearing the intervening Mississippi interests moved to dismiss this complaint in so far as it attempts to bring in issue the Mississippi intrastate rates, and they have since supported this motion by argument. Their contention is that the complaint does not conform to our Rules of Practice in that its allegations as to violation of section 3 are general, vague, and indefinite, and that it fails to point out any locality or localities in Mississippi from or to which the alleged unduly prejudicial rates apply.

In view of the finding hereinafter made it appears unnecessary to further discuss this motion.

The evidence shows that various intrastate scales of rates on sand and gravel are maintained within Mississippi by authority of the Mississippi commission. The Mobile & Ohio publishes a scale of rates on sand and gravel for all purposes, which scale ranges from 47 cents at 5 miles to 78 cents at 100 miles and to $1.49 at 270 miles. This same scale applies over the Illinois Central, Yazoo & Mississippi Valley, New Orleans & Northeastern, Louisville & Nashville, Alabama & Vicksburg, and the Frisco, when the commodities are consigned to Federal, State, county, or municipal officers, or their agents, for governmental purposes. This scale is much lower than any of the scales proposed in these proceedings, and according to the testimony is about the lowest maintained in the South. All the carriers above mentioned, with the exception of the Mobile & Ohio, maintain a somewhat higher scale on sand for the shorter hauls and various and substantially higher scales of rates on gravel when the commodities are not to be used for municipal purposes. Besides these different scales it was testified that there are numerous specific point-to-point rates [fol. 70] which are on a different basis from that provided by any of the scales. The record indicates that most of this traffic moves between points in Mississippi on these low municipal rates prescribed by the Mississippi commission. There are no joint-line scale on these commodities

within Mississippi and rates on shipments moving over two or more lines are made by combination of proportional rates which are 10 per cent less than the corresponding local rates. In so far as disclosed by this record the Mississippi intrastate rates on sand and gravel appear to be on no consistent basis, yet the question here presented is whether they are shown on this record to operate to the prejudice of these complainants.

The evidence shows that complainants do not ship sand and gravel into Mississippi, but it fails to show that the intrastate rates in Mississippi have prevented such movement.

Due to the lesser cost, clay gravel is used chiefly in improved highway construction in Mississippi. Clay gravel is not produced in the Delta district and the evidence shows that it moves in large volume into this district for highway construction. It is also used for railroad ballast.

The intervener Tri-State Road Material Association is an association of gravel and sand producers with plants located in Mississippi, western Tennessee, and western Kentucky.

Testimony was offered on behalf of this intervener to the effect that within this territory there are 32 washed-gravel and clay-gravel plants, 22 of which are located in Mississippi. These various plants it is asserted, furnish practically all the requirements of the State of Mississippi. Some of the important producing points in northern Mississippi are at Iuka, on the main line of the Southern; at Columbus, located on the Mobile & Ohio and the Colum- [fol. 71] bus & Greenville; and at Golden on the Illinois Central. In the southern part of the State there are plants at Hattiesburg, on the New Orleans & Northeastern; at Waynesboro, on the Mobile & Ohio; and at Bay St. Louis, on the Louisville & Nashville. In the western part of the State there is a large washed-gravel plant at Greenville. There are also large productions of washed gravel at Memphis.

The only carriers made defendant in No. 17763 which have a single-line route from Montgomery into Mississippi are the Mobile & Ohio and the Louisville & Nashville. The Southern, the principal single line from Chattanooga into Mississippi, is not named; nor are the Alabama & Vicksburg and the Columbus & Greenville, which lines cross Mis-

sissippi from east to west: The Illinois Central and the Yazoo & Mississippi Valley are two of the principal carriers of these commodities within Mississippi. The former is named as defendant in the complaint, but took no part in the hearing. The Yazoo & Mississippi Valley was not named defendant, but complainants at the hearing moved to make this line a defendant on the authority of a telegram received from its counsel and introduced in evidence, to the effect that the Yazoo & Mississippi Valley did not object to being named defendant. The Mississippi interveners object to this proposed amendment, in so far as it attempts to bring in issue the intrastate rates and charges of this line in Mississippi, on the ground that State authorities of Mississippi have not been duly notified as required by the act and our Rules of Practice. Aside from this objection the telegram is indefinite in that it fails to name any docket number or title of any case. Under the circumstances the amendment is denied.

Aside from testimony going to show that a large part of the intrastate movement in Mississippi is over lines [fol. 72] not made defendants it was also shown that shipments could not be made from Montgomery into Mississippi over lines that are named defendants without passing through or near Mississippi points of production. For example, there are four plants at Columbus, Miss., with a normal annual production of sand and gravel estimated at 400,000 tons. Columbus is on the eastern border of Mississippi, 180 miles from Montgomery over the Mobile & Ohio, and shipments over this line from the latter point would pass through Columbus. Shipments from Montgomery via Birmingham and the Frisco beyond to northeastern Mississippi would pass through Amory, Miss., where two gravel plants are located. A similar situation would be encountered by movements from Montgomery to the southern part of Mississippi over the Louisville & Nashville.

It is further shown that there is a large movement of clay gravel from Iuka, located in northeastern Mississippi, to the Delta district. The testimony is that such shipments generally move over interstate routes composed of the Southern to Memphis and the Illinois Central or Yazoo & Mississippi Valley beyond. It was also testified that there is a considerable movement from Iuka to Mississippi

points via the interstate route made up of the Southern to Middleton, Tenn., and the Gulf, Mobile & Northern beyond.

We find that the intrastate rates on sand and gravel within Mississippi are not shown to be unduly prejudicial to complainants.

Appropriate orders embodying our findings herein will be entered.

[fol. 73] ATCHISON, Commissioner, concurring:

I concur in the foregoing report only because the scale as prescribed for the longer distances is substantially that proposed by the carriers. In my view, the grading flattens out too quickly. It provides additional compensation of only 20 cents per ton, or 2 mills per ton-mile, for an added haul of 100 miles in the case of certain of the 100-mile blocks, which is obviously below the cost of service and imposes an undue burden upon other traffic. I am authorized to state that Commissioner Woodlock joins in this expression.

Commissioner Hall did not participate in the disposition of this case.

[fol. 74] Appendix A

List of Shipping Points of Sand, Gravel, Crushed Stone, and Slag in the States of Alabama, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia Stipulated by Consent of the Parties

Shipping point	Railroad location	Product
Alabama:		
Spruce Pine	Northern Alabama Ry.	Sand and gravel.
Argyle	A., B. & A. Railway	Sand and chert.
Chelsea	do	Do.
Lorme	do	Do.
Sheffield	L. & N. R. R.-Sou. Ry.	Slag.
Hobbs Island	N., C. & St. L. Ry.	Sand and gravel.
Gadsden	N., C. & St. L. Ry. A. G. S. Railroad. L. & N. Railroad.	Slag and sand.
Miller	A. G. S. Railroad.	Sand and gravel.
Cumberland	N., C. & St. L. Ry.	Crushed stone.
Montgomery	A. C. L. R. R.-C. of G. R. R. M. & O. R. R.-S. A. L. Ry. W. Ry. of Ala.	Sand and gravel.
Colrock	Sou. Railway	Asphaltic limestone.
Margerum	do	Do.
Flomaton	L. & N. R. R.	Sand and gravel.
Birmingham	A. G. S. R. R.-A. B. & A.-St. L.-S. F. Ry.-I. C. R. R.-L. & N. R. R.-M. & O. R. R.-S. A. L. Ry.-Sou. Ry.	Slag.

Shipping point	Railroad location	Product
Alabama:		
Ormoor	L. & N. R. R.	Slag.
Woodard	A. G. S.-A. B. & A.-St. L.-S. F. Ry.-I. C. R. R.-L. & N. R. R.-S. A. L. Ry.-Sou. Ry.	Do.
East Birmingham	A. G. S. R. R.-Sou. Ry.	Do.
Boyles	L. & N. R. R.	Do.
Bessemer	A. G. S.-A. B. & A.-St. L.-S. F. Ry.-I. C. R. R.-L. & N. R. R.-S. A. L. Ry.-Sou. Ry.	Do.
Nor. Birmingham	A. G. S.-I. C. R. R.-L. & N.-Sou. Ry.	Slag and crushed stone.
Thomas	A. G. S. R. R.-L. & N. R. R.	Slag.
Anniston	A. G. S. R. R.-Sou. Ry.	Do.
Alabama City	L. & N. R. R.-N. C. & St. L.-Sou. Ry.	Do.
Ketona	L. & N. R. R.	Crushed stone.
Vanns	do	Do.
Cobb City	do	Do.
Dolcito	do	Do.
Graystone	do	Do.
Albany	do	Do.
Grants Quarry	do	Do.
Calera	Sou. Ry.-L. & N. R. R.	Do.
Gate City	L. & N. R. R.	Do.
Brownson	do	Do.
[fol. 75] Mitylene	S. A. L. Ry.	Clay gravel.
Jacksons Lake	L. & N. R. R.	Sand and gravel.
Prattville Jct.	do	Do.
Coosada	do	Sand.
Okatmulke	do	Sand and gravel.
Cantelou's Spur	W. Ry. of Ala.	Clay gravel.
Rice	do	Do.
Chehaw	do	Sand and gravel.
Arrowhead	do	Do.
Mobile	L. & N. R. R.-Sou. Ry. M. & O. R. R.-G. M. & N.	Do.
Georgia:		
Albany	A. C. L. R. R.-C. of Ga. Ry. Ga. Nor.-G. S. W. & G.-S. A. L. Ry.	Sand.
Bolivar	L. & N. R. R.	Crushed stone.
Fairmount	do	Do.
Charing	A. B. & A.	Sand.
Clarks	do	Do.
Greenfield	do	Do.
Harkey	do	Do.
Marck	do	Do.
Morning Star	do	Do.
Norwich	do	Do.
Junction City	A. B. & A.-C. of Ga.	Do.
Paschal	do	Do.
Rollo	Sou. Ry.	Do.
Gaillard	do	Do.
Howard	Co. of Ga.	Do.
Stone Mountain	Ga. R. R.	Crushed stone.
Lithonia	do	Do.
Stockbridge	So. Ry.	Do.
Macon district	Sou. Ry-C. of Ga.	Do.
Altoona	N. C. & St. L.	Sand.
Graysville	do	Crushed stone.

Shipping point	Railroad location	Product
Georgia:		
Dry Ridge	C. of Ga.	Sand.
Fort Gaines	do	Gravel.
Georgetown	do	Do.
Bolingbroke	do	Crushed stone.
Granite Hill	Ga. R. R.	Do.
Ladds	S. A. L. Ry.	Do.
Whitestone	L. & N. R. R.	Do.
Allon	Sou. Ry.	Sand.
Holton	do	Crushed stone.
Elberton	S. A. L. Ry.	Do.
Oglesby	do	Do.
Cedartown	do	Do.
[fol. 76] Everett	do	Sand.
Williams	A. C. L. R. R.	Do.
Safford	do	Do.
Rex	Sou. Ry.	Do.
Helmar	do	Do.
Mississippi:		
Batesville	I. C. R. R.	Road gravel.
Charleston	Y. & M. V. R. R.	Clay gravel.
Avalon	do	Clay and washed gravel.
Greenville	Y. & M. V.-C. & G.	Sand and gravel.
Crystal Springs	I. C. R. R.	Clay gravel.
Brookhaven	do	Sand and gravel.
Kinnard	N. O. G. N.	Do.
Saratoga	G. & S. I.	Clay gravel.
Hattiesburg	G. & S. I.-N. O. & N. E.-M. C.	Washed sand and gravel.
Columbus	C. & G.-M. & O.-Sou.	Washed sand and gravel and clay gravel.
Amory	Frisco	Washed sand and gravel.
Oldham	Sou.	Clay gravel.
Gravel Siding	do	Do.
Morrison	do	(1)
Golden	I. C.	(1)
Gravel Pit	do	(1)
South Carolina:		
Buque	Sou.	Crushed stone.
Beverly	do	Do.
Dillon	A. C. L.-S. A. L.	Sand and gravel.
Wateree	Sou.	Sand and washed gravel.
Summit	do	Sand.
Pon Pon	A. C. L.	Sand-gravel.
Hoovers	do	Washed gravel.
Bennettsville	A. C. L.-B. & C.-R. I.	Do.
Beach Island	C. & W. C.	Clay gravel.
Musterfield	do	Do.
Savannah R'vr Pit	do	Do.
Moores Pit	do	Do.
Ellenton	do	Do.
Loland	do	Do.

[1] Character of product unknown.

Shipping point	Railroad location	Product
South Carolina:		
Steel Creek	C. & W. C.	Clay gravel.
Columbia	A. C. L.-S. A. L.-Sou.	Crushed stone, sand, and gravel.
Park Hill	Sou.	Crushed stone.
Liberty	do	Do.
Pacolet	do	Do.
Travelers Rest	G. & N.	Do.
Palmetto	A. C. L.	Do.
[fol. 77] **Tennessee:**		
Newson	N. C. & St. L.	Crushed stone.
Mimms	do	Do.
Sparta	do	Do.
Summitville	do	Do.
Cowan	do	Do.
Sherwood	do	Do.
Knoxville	L. & N.-Sou.	Sand and gravel.
Strawberry plains	Sou.	Crushed stone.
Mascot	do	Do.
Copperhill	N. & N.	Slag.
Franklin	do	Crushed stone.
Carters Creek	do	Do.
Oakdale	Sou.	Sand.
La Grange	do	Do.
Saulsbury	do	Do.
Lenoir City	do	Do.
Camden	N. C. & St. L.	Gravel.
Memphis	L. & N.-I. C.-Sou.-N. C. & St. L.	Sand and gravel.
Nashville	L. & N.-N. C. & St. L.-I. C.	Do.
Chattanooga	Sou.-N. C. & St. L.-L. A. & G.	Do.
Estill Springs	N. C. & St. L.	Do.
Goodrich	do	Slag.
Cowan	do	Do.
South Pittsburg	do	Do.
Sawyers Mill	do	Sand.
Lipe	do	Do.
Sewanee	do	Do.
Nido	do	Do.
Virginia:		
Petersburg	S. A. L.-A. C. L.	Sand and gravel.
Richmond	S. A. L.	Do.
Ellersbee	A. C. L.	Do.
Arundel Siding	do	Do.
Massaponax	R. F. & P.	Do.
North Carolina:		
Buque	Sou.	Crushed stone.
Grayseburg	S. A. L.	Sand and gravel.
Greystone	do	Crushed stone.
Lilesville	do	Sand and gravel.
Pee Dee	do	Do.
Mount Holly	do	Sand.
Belfast	A. C. L.	Gravel.
Gastonia	do	Do.
Goldsboro	do	Do.
Greenville	do	Do.
Paywell	do	Do.
Wilmington	do	Do.
Rolsville Quarry	do	Do.

[fol. 78] Appendix B

Short Lines in Behalf of Which Relief is Proposed

Bowdon Railway Company.
Collins & Glennville Railroad Company.
Elberton & Eastern Railroad Company.
Flint River & Northeastern Railroad Company.
Georgia & Florida Railway.
Georgia, Ashburn, Sylvester & Camilla Railway Company.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Greene County Railroad Company.
Louisville & Wadley Railroad Company.
Macon, Dublin & Savannah Railroad Company.
Sandersville Railroad Company.
Savannah & Atlanta Railway.
Savannah & Statesboro Railway Company.
Shearwood Railway Company.
Statesboro Northern Railway.
Sylvania Central Railway Company.
Talbotton Railroad Company.
Tallulah Falls Railway Company.
Union Point & White Plains Railroad Company.
Wadley Southern Railway Company.
Washington & Lincolnton Railroad Company.
Waycross & Southern Railroad Company.
Wrightsville & Tennille Railroad Company.

[fol. 79] Orders

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 21st Day of January, A. D. 1927

(I.)

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

No. 17699

ROQUEMORE GRAVEL COMPANY and ALABAMA SAND & GRAVEL COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Florida East Coast Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company, Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, Seaboard Air Line Railway Company, Southern Railway Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company; New Orleans & Northeastern Railroad Company; Cincinnati, Burnside & Cumberland River Railway Company; Georgia Southern & Florida Railway Company, St. Louis-San Francisco Railway Company, and The Western Railway of Alabama

No. 17699 (Sub-No. 1)

SAME

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Florida East Coast Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company, Missis-
[fol. 80] sippi Central Railroad Company, Mobile & Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, Cincinnati, Burnside & Cumberland River Railway Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, and The Western Railway of Alabama

(II.)

No. 17764

DIXIE SAND & GRAVEL COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Florida East Coast Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Rail

Road Company, The Nashville, Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, Seaboard Air Line Railway Company, and The Western Railway of Alabama.

No. 17764 (Sub-No. 1)

SAME

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Florida East Coast Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway; New Orleans Great Northern Railroad Com-
[fol. 81] pany, Seaboard Air Line Railway Company, Southern Railway Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, and The Western Railway of Alabama.

No. 17763

ROQUEMORE GRAVEL COMPANY, ALABAMA SAND & GRAVEL COMPANY, and DIXIE SAND & GRAVEL COMPANY

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY and B. L. Bugg, Receiver; Atlanta & West Point Rail Road Company, Atlantic Coast Line Railroad Company, Cen-

tral of Georgia Railway Company, Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile & Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Rail Road Company, The Nashville, Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, Seaboard Air Line Railway Company, and The Western Railway of Alabama.

(III.) It appearing, That No. 17517 is a proceeding instituted by the commission upon petition filed, and that Nos. 17699, 17699 (Sub-No. 1), 17763, 17764, and 17764 (Sub-No. 1) were assigned for hearing therewith:

It further appearing, That a full investigation of the matters and things involved has been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the defendants in Nos. 17699, 17764 (Sub-No. 1), and 17763, named above, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 1, 1927, and thereafter to abstain, from publishing, de-[fol. 82] manding, or collecting for the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from and to the points set out in the next succeeding paragraph hereof, rates in excess of those prescribed in said paragraph.

It is further ordered, That said defendants in Nos. 17699, 17764 (Sub-No. 1), and 17763, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 1 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the man-

ner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., respectively, to destinations on defendants' lines in Georgia and Mississippi, rates in amounts per ton of 2,000 pounds which shall not exceed those set forth in Table A of said report, provided, that where the transportation is in whole or in part over either of the so-called short-line defendants, namely, Georgia & Florida Railway, Georgia, Florida & Alabama Railway Company, and Macon, Dublin & Savannah Railroad Company, rates shall not exceed those determined under the scales set forth in Table A of said report plus an arbitrary not in excess of 25 cents per ton of 2,000 pounds, such arbitrary to accrue solely to the short line.

(IV.) It is further ordered, That defendants in No. 17699 (Sub-No. 1) and No. 17764, named above, accordingly as they participate in the transportation, be, and they are hereby notified and required to cease and desist, on or before June 1, 1927, and thereafter to abstain, from practicing the undue prejudice found in said report to exist, and from publishing, demanding, or collecting rates for the transportation of gravel (washed or unwashed) and clay gravel, [fol. 83] in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., respectively, to destination on defendants' lines in Georgia and Mississippi, which exceed the rates prescribed in the next succeeding paragraph hereof.

It is further ordered, That said defendants in No. 17699 (Sub-No. 1) and No. 17764, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act, and thereafter to maintain and apply to the transportation of gravel (washed or unwashed) and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., respectively, to destinations on defendants' lines in Georgia and Mississippi, rates which shall not exceed, distance con-

sidered, the rates contemporaneously maintained by said defendants on slag, in carloads, from Birmingham, Gadsden, Anniston, and other slag-producing points in northern Alabama, and from Copperhill, Tenn., to the same destinations, subject to the application of the rates based on the scales hereinbefore prescribed from Montgomery and Chattanooga to destinations in Georgia and Mississippi as maximum rates.

It is further ordered, That carriers respondent in No. 17517, namely: Albama Great Southern Railroad Company; Albany Passenger Terminal Company; Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, Receiver; Atlanta Terminal Company; Atlantic Coast Line Railroad Company; Augusta Aiken Railway & Electric Corporation; Augusta Union Station Company; Augusta & Summerville Railroad Company; Atlanta & West Point Railroad Company; Arabia Granite Company; Bowden Railway Company; Central of Georgia Railway Company; Charleston & [fol. 84] Western Carolina Railway Company; Chattahoochee Railway Company; Collins & Glenville Railroad Company; Elberton & Eastern Railroad Company; Flint River & Northeastern Railroad Company; Gainesville Midland Railway, Gordon C. Carson, Receiver; Gainesville Midland Railway, Wm. B. Veazey, Receiver; Georgia, Ashburn, Sylvester & Camilla Railway Company; Georgia, Florida & Alabama Railway Company; Georgia & Florida Railway, John Skelton Williams, Receiver; Georgia Northern Railway Company; Georgia Railroad; Georgia Southern & Florida Railway Company; Georgia, Southwestern & Gulf Railroad Company; Greene County Railroad Company; Hartwell Railway Company; Louisville & Nashville Railroad Company; Louisville & Wadley Railroad Company; Macon, Dublin & Savannah Railroad Company; Macon Terminal Company; Millstead Railroad Company; Milltown Air Line Railway; Nashville, Chattanooga & St. Louis Railway; Sandersville Railroad Company; Savannah & Atlanta Railway, Chas. E. Gay, Receiver; Savannah & Atlanta Railway, T. B. Felder, Receiver; Savannah River Terminal Company; Savannah & Statesboro Railway Company; Savannah Union Station Company; Seaboard Air Line Railway Company; Shearwood Company; South Georgia Railway Company; South-

(V.)

ern Railway Company; Statesboro Northern Railway; St. Mary's Railroad Company; Stone Mountain Granite Corporation; Sylvania Central Company; Talbotton Railroad Company; Tallulah Falls Railway Company, J. F. Gray, Receiver; Tennessee, Alabama & Georgia Railway; Tennessee Electric Power Company; Union Point & White Plains Railroad Company; Wadley Southern Railway Company; Washington & Lincolnton Railroad Company; Waycross & Southern Railroad Company; Waycross & Western Railroad Company; and Wrightsville & Tennille Railroad Company, according as they participate in the transporta-[fol. 85] tion, be, and they are hereby, notified and required to cease and desist, on or before June 1, 1927, and thereafter to abstain, from publishing, demanding, or collecting for the interstate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points within the territory set forth in the next succeeding paragraph hereof, rates in excess of those prescribed in said paragraph.

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 1, 1927, upon notice to this commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the interstate commerce act and thereafter to maintain and apply to the interstate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other States in southern territory, as described in the report herein, except Florida, rates in amounts per ton of 2,000 pounds which shall not exceed those set forth in Table A of said report, provided, that where the transportation is in whole or in part over either of the so-called respondent short lines set forth in Appendix B, to the report herein, rates shall not exceed those determined under the scales set forth in Table A of said report plus an arbitrary not in excess of 25 cents per ton of 2,000 pounds, such arbitrary to accrue solely to the short line.

(VI) It is further ordered, That the minimum carload weight to be published by defendants and respondents in

the above-entitled proceedings in connection with the rates herein prescribed shall be 90 per cent of the marked ca-
[fol. 86] pacity of the car, except when car is loaded to full visable capacity, actual weight shall govern.

It is further ordered, That defendants an respondents in the above-entitled proceedings shall use, in computing distances under the rates prescribed herein, the shortest routes over which carload traffic can be moved without transfer of lading. Lines under common control or management shall be considered as a single line in applying the rates prescribed.

And it is further ordered, That the above orders shall remain in force and effect until the further order of the commission.

No. 17689

ROQUEMORE GRAVEL COMPANY et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

This case being at issue upon complaint and answers on file, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part thereof:

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

Investigation and Suspension Docket No. 2470

Sand, Gravel, and Slag from Alabama and Tennessee to Points in Georgia

It appearing, That by order dated July 31, 1925, the commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until November 29, 1925:

[fol. 87] It further appearing, That the operation of said schedules has been voluntarily deferred by respondents until February 27, 1927;

And it further appearing, That a full investigation of the matters and things involved has been had, and that the commission on the date hereof has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

(VII.) It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel the said schedules, on or before March 2, 1927, upon notice to this commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 6 of the interstate commerce act, without prejudice to the filing on 10 days' notice of new schedules in accordance with the conclusions expressed in the said report.

And it is further ordered, That this proceeding be discontinued.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 88] EXHIBIT B TO BILL OF COMPLAINT

Commissioners: James A. Perry, Chairman; Albert J. Woodruff, Vice-Chairman; Walter R. McDonald, Calvin W. Parker, Perry T. Knight. Robt. N. Springfield, Secretary. E. M. Price, Rate Expert. S. J. Smith, Jr., Special Attorney. J. Houston Johnston, Consulting Engineer.

GEORGIA PUBLIC SERVICE COMMISSION, ATLANTA

File 16384

March 13th, 1928.

Petition—Charles Barham, Chairman, Representing All Carriers Members Southern Freight Association and Petition—Southern Railway for Revision of Rates on Chert, Sand, Gravel, Slag, and Crushed Stone between Points in Georgia.

By Order, dated February 25, 1925, effective April 1, 1925, the Commission approved the general revision of all

rates on chert, gravel, sand, stone, etc., between points in Georgia, Section 5 of this order making the following provision:

"Ordered Further: (5) All carriers are authorized to cancel all class and commodity rates that are lower than the commodity rate schedules and classification ratings provided in this order and observe as a maximum the commodity rate schedules and classification ratings authorized herein, except that in no instance shall the rates on the commodities covered by this order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul."

[fol. 89] The effect of the above stated order was to increase very materially the rates on these materials between points in Georgia where the preponderance of the movement was taking place, and in order for the carriers to take advantage of the increased rates approved, and comply with Section 5, it was necessary that they increase many of the then existing interstate rates from points in other States to points in Georgia. Carriers submitted a petition to the Commission for suspension of the effective date of its order on the grounds that they did not have sufficient time to make the necessary revision of the interstate rates to bring them in line with the intrastate rates approved, whereupon we suspended the application of Section 5 until August 1, 1925.

Certain Georgia carriers filed formal complaint with the Interstate Commerce Commission against the Georgia intrastate rates, alleging discrimination under Section 13 of the Interstate Commerce Act, this complaint being followed by complaints from certain shipping interests in Alabama and Tennessee, and as a result the Interstate Commerce Commission by its order, Docket 17517, et al., required all carriers in Georgia to become parties to the proceeding for the purpose of determining whether or not the Georgia rates caused undue discrimination against interstate commerce. The investigation of the Interstate Commerce Commission resulted in its order dated January

21, 1927, 122 I. C. C. 133. The carriers' petition, which we now have before us is for approval of the rates prescribed by the Interstate Commerce Commission in its Docket 17517, et al., 122 I. C. C. 133. At pages 169 and 170, the Interstate Commerce Commission stated:

"The changes in rates both intrastate within Georgia and interstate to Georgia brought about by the Georgia Commission's Order of February 25, 1925, have been fully discussed. We have been impressed with what appears to us to have been the broad-minded attitude taken by the Georgia Commission when it undertook the revision of [fol. 90] these rates which resulted in its Order of February 25, 1925. This order as we have seen resulted in raising many depressed intrastate rates applying between important producing and consuming points, and subsequently had the effect of bringing about substantial increases in important depressed interstate rates. Considering the results brought about by this Order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia Commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any Order in No. 17517 for the future insofar as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia Commission will cooperate in authorizing such revision as may be necessary to bring their rates into harmony with the interstate adjustment herein approved."

We are in accord with the views of the Interstate Commerce Commission that the intrastate rates should not cause undue discrimination against interstate commerce, neither should interstate rates result in undue discrimination against intrastate commerce, and with this end in view, it

is the purpose of this Commission to prescribe such rates as will permit of free movement and competition both inter and intrastate.

The rates which we prescribed on sand, unwashed gravel and chert, effective April 1, 1925, were slightly lower than the rates which we approved on washed gravel, crushed stone and slag. However, the rates which were prescribed by the Interstate Commerce Commission in its Docket [fol. 91] 17517 provide for the same rates on all these commodities, the general level of the single line rates being approximately the same as the rates which we prescribed on crushed stone, slag, and washed gravel. The rates which we prescribed provided for a joint line differential for hauls over two or more lines for distances under 100 miles, whereas the rates prescribed by the Interstate Commerce Commission in Docket 17517 provide for a joint line differential for all distances under 480 miles.

The investigation which we have made shows very keen competition between the producers of all these materials at the principal markets, both inter and intrastate, the producers in Georgia coming in direct competition with the producers in Alabama, Tennessee and South Carolina. In our opinion, to approve the gradation of the scale prescribed by the Interstate Commerce Commission would work great injury and damage to shippers and carriers on Georgia intrastate traffic, and for that reason we are prescribing a revised scale, in order that all interests may be preserved.

In Southern Class Rate Investigation, 113 I. C. C. 200, Rates on Fertilizers and Fertilizer Material between Points in Southeastern Territory I. C. C. Docket 16295, Southern Cement Rates I. C. C. 15806 and Georgia Peach Growers' Exchange, et al., Docket 16462, the Interstate Commerce Commission did not provide for a differential to be added for joint line movement over two or more lines. It is our opinion that the principles, with regard to joint line rates, as laid down by the Interstate Commerce Commission in these cases are entirely proper, and it is our conclusion that this principle should prevail in this case.

Should we approve the joint line differentials for application intrastate in Georgia which have been approved by the Interstate Commerce Commission for interstate application in Docket 17517, it would result in discrimination

between the producers of these materials within the State [fol. 92] of Georgia, and would place the producers in Georgia at a great disadvantage with their competitors in the States of Alabama and Tennessee, this condition being brought about on account of the location of the producing plants in Georgia, and the necessity for joint line movement to points of consumption that are reached by single line movement from producing points in other States. The rates which we are approving in the following Order, in our opinion, are just and reasonable, and will not be preferential to Georgia producers, or result in undue discrimination against interstate producers. It is therefore,

Ordered: (1) That effective on and after May 1, 1928, and until the further Order of this Commission, the rates shown in Appendix A, attached hereto, and made a part of this Order, shall be the maximum rates to be charged by Freight Tariff Class "A" and Freight Tariff Class "B" railroads between points wholly within the State of Georgia, and to be used and applied by each of the railroads operating within the State of Georgia, in the manner and as hereinafter directed.

Ordered Further: (2) That the ratings provided for in this Order shall be applied to all Freight Tariff Class "A" and Freight Tariff Class "B" railroads, as designated in Appendix B, attached hereto, and made a part hereof.

Ordered Further: (3) That the Rate Tables, as shown in Appendix A, shall be applied as follows:

Rate Table No. 1. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class "A".

Rate Table No. 2. To joint line application between points within this State, located on two or more of the severally named railroads in Freight Tariff Class "A".

Rate Table No. 3. To joint line application between points located within this State, located on one or more Freight Tariff Class "A" railroads, and one or more Freight Tariff Class "B" railroads. Also between points [fol. 93] located on one or more Freight Tariff Class "A" railroads, when the short line distance is constructed in connection with a Freight Tariff Class "B" railroad, and the rate is lower than provided for in the application of Rate Table No. 1 or No. 2. Also between points on one or more Freight Tariff Class "B" railroads, when the short

line distance is constructed in connection with a Freight Tariff Class "A" railroad, and the rate is lower than provided for in the application of Rate Tables No. 4 or No. 5.

Rate Table No. 4. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class "B".

Rate Table No. 5 To joint line application between points within this State, located on one or more of the severally named railroads in Freight Tariff Class "B".

Ordered Further: (4) That on or before the effective date of this Order, all class and commodity rates between points within this State that are higher than the rate schedules and classification ratings provided for in this Order shall be cancelled, and the rate schedules and classification ratings provided in this Order observed as a maximum.

Ordered Further: (5) All carriers are authorized to cancel all rates on the commodities herein provided for that are lower than the rate schedules and classification ratings provided in this Order and observe as a maximum the rate schedules and classification ratings authorized herein, except that in no instance shall the rates on the commodities covered by this Order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul. [fol. 94] Ordered Further: (6) The Commission's Freight Rule No. 27 is hereby suspended, and superseded by Rate Tables 2, 3 and 5, in constructing joint line rates on the commodities covered by this order.

Ordered Further: (7)

(1) Joint rates between Freight Tariff Class "A" railroads, shall be divided on percentages arrived at by using the local rate of each line to and from the Junction or transfer point as factors:

(2) Joint rates between Freight Tariff Class "A" and Freight Tariff Class "B" railroads shall be divided by allowing the Freight Tariff Class "A" railroad the same

revenue or proportion of the joint rate as it would receive in connection with a Freight Tariff Class "A" road, the remainder of the joint rate to accrue to the Freight Tariff Class "B" road or roads; except, that where the joint rate is made by use of the Freight Tariff Class "B" scale and traffic is handled jointly by Freight Tariff Class "A" and Freight Tariff Class "B" roads, the Freight Tariff Class "B" road shall receive the same revenue or proportion of the joint rate as if the traffic had been handled jointly by Freight Tariff Class "B" roads, the remainder of the joint rate to accrue to the Freight Tariff Class "A" road or roads.

(3) Joint rates between Freight Tariff Class "B" roads shall be divided in the same manner as provided for Freight Tariff Class "A" roads.

(4) The basis for the division of rates provided for herein is not intended to prevent carriers from agreeing among themselves to the division of joint rates on any other basis that may be satisfactory to all parties concerned.

Ordered Further: (8) That when, by the use of the schedules of rates authorized in this Order, rates are established between competitive points by a carrier or carriers whose lines form the lowest rate making route, the carrier or carriers forming the longer distance, or higher rate making route, are permitted to meet such competition, and [fol. 95] to charge higher rates at intermediate points, but in no instance shall rates be charged higher than for the single or joint line scale of rates authorized herein, for the actual distance, via the route making the lowest rate to, from, or between such intermediate points. In instances where the carriers establish between any points, lower rates than authorized herein, no higher rates shall be charged at any intermediate point, without the approval of the Commission having first been obtained.

By order of the Georgia Public Service Commission.

(Signed) James A. Perry, Chairman. Robt. N. Springfield, Secretary.

[fol. 96] Appendix "A"

Commodity Group No. 22-A

Maximum Rates to be applied on chert, gravel, (sand or clay gravel, washed or unwashed), sand, slag (granulated, lump or pulverized in packages or in bulk), crushed stone, broken stone, rubble stone, stone screenings, stone flagging, carload, minimum weight to be charged for 80,000 pounds, excess in proportion, except where a car of less than 80,000 pounds capacity is furnished the marked capacity of the car shall be charged for

(Rates in Centers per Ton 2,000 Pounds)

Rate tables	1 & 2	3	4 & 5
Distances.			
5 Miles and Under	50	60	60
10 " " Over 5	50	60	60
15 " " " 10	55	65	65
20 " " " 15	55	65	65
25 " " " 20	60	70	70
30 " " " 25	60	70	70
35 " " " 30	70	80	80
40 " " " 35	70	80	80
45 " " " 40	70	80	80
50 " " " 45	70	80	80
55 " " " 50	80	90	90
60 " " " 55	80	90	90
65 " " " 60	80	90	90
70 " " " 65	80	90	90
75 " " " 70	90	100	100
80 " " " 75	90	100	100
85 " " " 80	90	100	100
90 " " " 85	90	100	100
95 " " " 99	100	110	110
100 " " " 95	100	110	110
110 " " " 100	100	110	110
120 " " " 110	110	120	120
130 " " " 120	110	120	120
140 " " " 130	120	130	130
150 " " " 140	120	130	130

Rate tables Distances.			1 & 2	3	4 & 5
160	Miles and Over	150	120	130	130
170	" " "	160	130	140	140
180	" " "	170	130	140	140
190	" " "	180	130	140	140
200	" " "	190	140	150	150
210	" " "	200	140	150	150
220	" " "	210	140	150	150
230	" " "	220	150	160	160
240	" " "	230	150	160	160
250	" " "	240	150	160	160
260	" " "	250	160	170	170
270	" " "	260	160	170	170
280	" " "	270	160	170	170
290	" " "	280	170	180	180
300	" " "	290	170	180	180
320	" " "	300	170	180	180
340	" " "	320	180	190	190
360	" " "	340	180	190	190
380	" " "	360	190	200	200
400	" " "	380	190	200	200
420	" " "	400	200	210	210
440	" " "	420	200	210	210
460	" " "	440	210	220	220

[fol. 97]

Appendix "B"

Classification of Railroads

Freight Tariff Class "A" Railroads:

The Alabama Great Southern R. R. Co.
Atlanta, Birmingham & Coast R. R. Co.
Atlantic Coast Line R. R. Co.
Atlanta & West Point R. R. Co.
Central of Georgia Rwy. Co.
Charleston & Western Carolina Rwy. Co.
Georgia Railroad.
Georgia, Southern & Florida Rwy. Co.
Lexington Terminal R. R. Co.
Louisville & Nashville R. R. Co.
Monroe Railroad Co.
Nashville, Chattanooga & St. Louis Rwy.
Seaboard Air Line Rwy. Co.
Southern Railway Co.

Freight Tariff Class "B" Railroads:

Bowdon Railway Company.
Collins & Glennville Railroad Co.
Elberton & Eastern Railroad Co.
Flint River & Northeastern R. R. Co.
Gainesville Midland Railway.
Gainesville & Northwestern Railroad Co. (G. A. Austin and Sidney Smith, Receivers).
Georgia and Florida Railroad.
Georgia, Ashburn, Sylvester & Camilla Ry. Co.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Georgia, Southwestern & Gulf R. R.
Greene County Railroad Company.
Hartwell Railway Company.
Lakeland Railway.
Louisville & Wadley Railroad Co.
Macon, Dublin & Savannah R. R. Co.
Milltown Air Line Rwy.
Millstead Railway.
St. Mary's Railroad.
Sandersville R. R. Co.
Savannah and Atlanta Railway (Charles E. Gay, Jr., Receiver).
Savannah and Statesboro Railway Co.
Shearwood Railway Company.
Smithonia and Dunlap R. R.
South Georgia Railway.
Statesboro Northern Railway.
Sylvania Central Railway Company.
Talbotton Railroad Company.
Tallulah Falls Railway Company (J. F. Gray, Receiver).
Tennessee, Alabama and Georgia R. R.
Union Point and White Plains R. R. Co.
Wadley Southern Railway Company.
Washington & Lincolnton R. R. Co.
Waycross and Southern R. R. Co.
Wrightsville & Tennille R. R. Co.

[fol. 98] EXHIBIT C TO BILL OF COMPLAINT

Order

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 4TH DAY OF JUNE, A. D. 1928

No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

No. 17763

ROQUEMORE GRAVEL COMPANY et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

It appearing, That under date of January 21, 1927, the Commission issued a report and order in the above-entitled proceedings and in No. 17517 prescribed a reasonable basis of rates and minimum weights for the interstate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other states in Southern territory, except Florida, and that the said reasonable basis of rates and minimum weights was also prescribed in No. 17763 for the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia;

It further appearing, That in said report the Commission stated it did not deem it necessary to make any findings or enter any order in No. 17517 in so far as unjust discrimination against interstate commerce was there involved, as it was felt that the Georgia Public Service Com-
[fol. 99] mission would cooperate in authorizing such revision in the intrastate rates within Georgia as might be necessary to bring such rates into harmony with the interstate adjustment prescribed as aforesaid;

It further appearing, That a petition has now been filed on behalf of carriers respondent in No. 17517, operating

in the State of Georgia, in which it is averred that the Georgia Public Service Commission by order promulgated on the 13th day of March, 1928, effective the 1st day of May, 1928, required petitioners to establish rates on the aforesaid commodities within said State of Georgia which are not in harmony with, but are in many instances widely at variance with, and less than, the rates required to be established by this Commission for interstate traffic, and that said petitioners pray that this proceeding be reopened for further investigation;

It is ordered, That No. 17517 be, and it is hereby, reopened for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Commission to be maintained by said respondent railroads on intrastate shipments of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in relation to the interstate rates and minimum weights prescribed as aforesaid causes, or will cause, any undue or unreasonable advantages, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

It is further ordered, That No. 17763 be reopened solely on the issue as to whether the intrastate rates and minimum weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, [fol. 100] in shipping sand, gravel (washed or unwashed) and lay gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in the State of Georgia.

It is further ordered,

(1) That the State of Georgia be notified of these proceedings by sending copies of this order and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga.

(2) That notice of these proceedings be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

(3) That these proceedings be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 101] EXHIBIT D TO BILL OF COMPLAINT

INTERSTATE COMMERCE COMMISSION

No. 17517[1]

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

Submitted October 28, 1929. Decided December 9, 1929

1. Upon further hearing in No. 17517, rates maintained by respondents on sand, gravel crushed stone and allied commodities, in carloads, for application within Georgia, found to be unduly prejudicial to interstate shippers, unduly preferential of intrastate shipppers, and unjustly discriminatory against interstate commerce.

2. Upon further hearing in No. 17763, undue prejudice to complainant at Montgomery, Ala., and undue preference of shippers between points in Georgia, found to result from the relation of interstate rates on sand and gravel, in straight or mixed carloads, from Montgomery to destinations in Georgia, and intrastate rates on sand, gravel, and crushed stone, in carloads, from points in Georgia to the same destinations.

3. Rates prescribed which will remove such preference prejudice and discrimination found to exist. Former reports, 122 I. C. C. 133; 140 I. C. C. 85.

Frank W. Gwathmey for Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Atlanta & West Point Railroad Company, Western Railway of Ala-

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[1]This report also embraces No. 17763, Roquemore Gravel Company, et al. v. Atlanta Birmingham & Atlantic Railway Company, et al., on further hearing.

[fol. 102] bama, Georgia Railroad, and Nashville, Chattanooga & St. Louis Railway; H. L. Walker for Southern Railway system lines; E. D. Mohr and Ben F. Morris for Louisville & Nashville Railroad Company; and John A. Streyer for American Short Line Railroad Association.

Charles E. Cotterill and M. H. Caskie for complainants in No. 17763; A. J. Ribe for Birmingham Slag Company and Montgomery Gravel Company; H. S. Angle for Dixie Sand & Gravel Company; Edwin Brooker for Atlanta Sand & Supply Company and Allon Sand Company; H. T. Youmans for Ellenton Gravel Company.

John S. Burchmore, Nuel D. Belnap, Luther M. Walter and S. J. Smith, Jr., for Georgia Public Service Commission; M. C. Moore for Mississippi Railroad Commission; Thomas J. Burke for South Carolina Highway Commission; Edgar Watkins, Watkins, Asbil & Watkins, Harry T. Moore, and E. H. Hart for State Highway Commission of Georgia, City of Atlanta, counties of Fulton and DeKalb, and other Georgia interests; J. Prince Webster for Consolidated Quarries, Inc., and Georgia Lime-Rock Company; Slaughter Linthicum and R. H. Cobb for Piedmont Corporation; and G. B. Graves pro se.

Report of the Commission on Further Hearing

LEWIS, Chairman:

Exceptions to the report proposed by the examiner were filed on behalf of the Georgia Public Service Commission and certain other Georgia interests, and oral argument was had. Our conclusions differ slightly from those proposed by him.

These proceedings now before us on further hearing present the sole question of whether the rates and minimum weights which respondent carriers are required to [fol. 103] maintain on sand, gravel, clay gravel, crushed stone, and slag, within Georgia under an order issued by the Georgia Public Service Commission on March 13, 1928, are unlawful in their relationship to the interstate rates and minimum weights which we prescribed as reasonable on the same commodities in the original report herein, 122 I. C. C. 133.

The original investigation in No. 17517 was instituted by us under section 13 of the interstate commerce act upon

petition of respondents operating in Georgia, to determine whether the rates which said respondents were then required by the Georgia commission to maintain on this traffic within Georgia resulted in undue preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or in unjust discrimination against interstate or foreign commerce; and, if so, what rates should be prescribed to cure the situation. All railroads operating in Georgia subject to our jurisdiction were there made respondents and the Governor of Georgia and the Georgia commission were given due notice.

The complainant in No. 17763 attacked, among other things, the rates on sand and gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia as being unreasonable and unduly prejudicial in favor of intrastate shippers of the same commodities and of crushed stone, between points in Georgia. This and various other complaints attacking the rates on these commodities from Montgomery and Chattanooga were heard and disposed of with No. 17517 on one record which was a comprehensive and voluminous one embracing a thorough presentation of the rate situation, and the transportation and other conditions pertaining to the movement of these commodities in the South.

As a result of this investigation, in our original report, 122 I. C. C. 133, decided January 21, 1927, we prescribed [fol. 104] in No. 17517 maximum reasonable interstate single-line and joint-line distance rates on sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, for application between points in the State of Georgia, and between points in the State of Georgia and points in other States in southern territory, except Florida. Certain so-called short or weak lines were authorized to charge an arbitrary of 25 cents per ton of 2,000 pounds in addition to the basic or standard-line rates, such arbitrary to accrue solely to the short line.

In the complaint cases we prescribed the same basis of rates on sand, gravel (washed or unwashed), and clay gravel from Montgomery and Chattanooga, and on slag from Birmingham and other slag-producing points in northern Alabama and from Copperhill, Tenn., to destina-

tions in Georgia and Mississippi.

The rates prescribed in these several proceedings will hereinafter be referred to as the 17517 scales. They are shown in the Appendix to this report.

Rates under the 17517 scales became effective October 1, 1927. In a subsequent decision in these cases on further hearing 140 I. C. C. 85, we prescribed the 17517 scales for application on like traffic to and from points in Florida south of the line of the Seaboard Air Line Railway from Jacksonville to River Junction, Fla., plus certain arbitraries for that part of the haul in Florida lying south of the said line. Those rates became effective August 2, 1928. As a result of our orders in these cases and subsequent voluntary extensions by the carriers the 17517 joint-line and single-line scales now apply on interstate traffic throughout most of southern territory, except between points in that portion embracing Mississippi and the western portions of Kentucky and Tennessee, and referred to as the Mississippi Valley. They apply on intrastate traffic within North Carolina and Alabama, and also within Kentucky and Tennessee except the western portions thereof.

[fol. 105] Discussing in the original report the then Georgia intrastate rate situation brought about by the order of the Georgia commission there considered, we stated at pages 169 and 170:

Considering the results brought about by this order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any order in No. 17517 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia commission will cooperate in authorizing

such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved.

Following the issuance of the original report the respondent carriers operating in Georgia filed their petition with the Georgia commission in which they requested that commission to authorize the establishment of the 17517 scales for intrastate application within Georgia. Hearings were had on this petition and thereafter, on March 13, 1928, the Georgia commission issued an order in which it refused to authorize the application of these scales within Georgia but directed the carriers to establish, on May 1, 1928, a different scale of rates. Those rates became effective within Georgia on May 1, 1928, as ordered.

Subsequently, the respondent carriers filed with us their supplemental petition setting forth, among other things, [fol. 106] that the aforesaid rates prescribed by the Georgia commission are not in harmony with, but in many instances vary widely from and are substantially lower than, the 17517 scales. Whereupon we reopened No. 17517 for further hearing for the sole purpose of determining whether the rates and minimum weights required by the aforesaid order of the Georgia commission to be maintained by said respondents on intrastate shipments within Georgia of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in relation to the interstate rates and minimum weights prescribed by us as aforesaid, cause, or will cause, any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

At the same time we reopened No. 17763 solely on the issue as to whether the intrastate rates and minimum weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel, and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, in shipping sand, gravel (washed or unwashed), and clay gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia.

The Governor of Georgia and the Georgia Public Service Commission were given due notice.

Various shippers of these commodities located outside of Georgia, as well as shippers of sand from Rollo and Allon, Ga., support the attack here made on the order of the Georgia commission. On the other hand, various producers and receivers within Georgia support the Georgia commission in the defense of its order.

It is urged, on behalf of the Georgia commission and other Georgia interests, that we are without jurisdiction [fol. 107] to here enter an affirmative order because of the limited scope of the order reopening these cases for further hearing. It is contended that the proceedings, should have been reopened also for the purpose of determining a reasonable basis of interstate rates.

As heretofore stated, the 17517 scales were recently prescribed in these proceedings for interstate application after an exhaustive investigation and are now applied on interstate traffic throughout the greater part of southern territory. The only reason that no findings were made for the future or order entered in the original proceedings concerning the Georgia intrastate rates was because this commission, desirous of fostering and encouraging the spirit of cooperation between it and the State commissions, "felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved." The Georgia commission has authorized a revision. Respondents and others complained and are here contending that this intrastate revision is so out of harmony with the approved interstate revision that it has brought about an unlawful relationship. For the purpose of determining whether or not this is the fact, the proceedings were reopened and the further hearing had. The scope of the further hearing was properly limited to the question indicated. If the contention made on behalf of the Georgia commission in this regard were sound, then our efforts to secure cooperative action in situations such as here presented instead of bringing about that result, could be made the instrument of burdening this commission with endless investigations covering the same subject matter and would result in litigation being prolonged indefinitely. The contention is without merit.

The order of the Georgia commission here in question prescribed rates for distances up to and including 460 miles. It prescribed two scales, one for application to both single-line and joint-line hauls between points within [fol. 108] Georgia located on standard or trunk lines, and the other for application between points on certain designated short or weak lines as well as between points on said short or weak lines and points on standard lines. The latter scale is uniformly 10 cents higher than the standard or trunk line scale. No joint-line arbitraries were allowed in any case.

Rates are herein stated in amounts per ton of 2,000 pounds.

The following table illustrates the differences between the standard-line 17517 scales which we prescribed and the standard-line scales prescribed by the Georgia commission:

	Single Line			Joint Line		
Miles	I. C. C. Docket 17517 Cents	Georgia Comm. order 3-13-28 Cents	Differences Cents	I. C. C. docket 17517 Cents	Georgia Comm. order 3-13-28 Cents	Differences Cents
10	50	50		65	50	—15
20	55	55		70	55	—15
30	60	60		75	60	—15
40	70	70		85	70	—15
50	80	70	—10	95	70	—25
60	80	80		95	80	—15
70	90	80	—10	105	80	—25
80	90	90		105	90	—15
90	100	90	—10	115	90	—25
100	100	100		115	100	—15
110	110	100	—10	125	100	—25
125	110	110		125	110	—15
130	120	110	—10	135	110	—25
150	120	120		135	120	—15
160	130	120	—10	140	120	—20
175	130	130		140	130	—10
190	135	130	— 5	145	130	—15
200	135	140	+ 5	145	140	— 5
220	140	140		150	140	—10
230	140	150	+10	150	150	
250	150	150		160	150	—10
260	150	160	+10	160	160	
280	160	160		170	160	—10
290	160	170	+10	170	170	
320	165	170	+ 5	175	170	— 5
360	175	180	+ 5	180	180	
400	185	190	+ 5	190	190	
440	195	200	+ 5	200	200	
460	205	210	+ 5	210	210	

—Georgia Public Service Commission Scale lower than 17517 scale.
+Georgia Public Service Commission Scale higher than 17517 scale.

[fol. 109] It will be noted that up to 200 miles the Georgia scale is, in some instances, the same as the 17517 single-line scale and in other instances the Georgia scale is less, generally by 10 cents. At 200 miles and beyond, the Georgia scale is in some cases the same as the 17517 single-line scale but is generally higher than the latter by amounts ranging from 5 to 10 cents. The Georgia scale is less than the 17517 joint-line scale by amounts ranging from 5 to 25 cents, except that for the longer hauls the two scales are the same in certain instances. The evidence indicates that practically all of the intrastate movements of this traffic within Georgia are less than 200 miles.

As has been noted, we authorized an arbitrary of 25 cents per ton over the 17517 standard line scales to the short or weak lines whereas the Georgia commission authorized an arbitrary of 10 cents.

The minimum carload weight prescribed in connection with the 17517 scales is 90 per cent of the marked capacity of the car except that where car is loaded to full visible capacity actual weight shall govern. The Georgia commission prescribed, in connection with its scales, a minimum weight of 80,000 pounds, excess in proportion, except that where a car of less than 80,000 pounds is furnished the marked capacity of the car shall be charged for.

The commodities under consideration are used chiefly in the building of highways and in concrete construction work. They are also used for railroad ballast. The original report contains a full discussion concerning points of production and chief points of consumption in the South, tonnage, and competition between producer. As there pointed out, the carriers in the South transport a vast tonnage of this traffic and derive therefrom a material part of their revenue. That there is keen competition between the respective producers and that interstate and intrastate shippers are in direct competition with each other is admitted by all. The producers in Alabama, Tennessee, and South [fol. 110] Carolina come in direct competition with producers in Georgia.

The Montgomery, Ala., district produces large quantities of sand and gravel. Sand and gravel are also produced at Chattanooga, Tenn., just north of the Georgia-Tennessee line. Much crushed stone, sand and gravel are produced

in the Carolinas. Illustrative points of production are Columbia, Steel Creek, and Ellenton, S. C., located about 80, 30, and 22 miles, respectively, from the Georgia State line. Slag, a by-product of iron and steel production, is produced chiefly in the Birmingham, Ala., district. The chief points of production of crushed stone in Georgia are located in the Stone Mountain and Lithonia districts near Atlanta. There are also quarries in the vicinity of Macon and in the northwestern part of the State of Graysville and Ladds. Sand is produced at such points as Rollo, Gaillard and in the Junction City district.

Exhibits were introduced by respondents showing the interstate rates from numerous representative shipping points to representative destinations in Goergia, which rates are on the basis of the 17517 scales; rates from representative Georgia origins to the same points, which are on the basis of the Georgia commission scale; and the amounts by which the said Georgia rates differ from the 17517 basis. The following data, taken from these exhibits and corrected to conform with our tariff check, are illustrative:

From	To	Miles	Interstate rates on basis of 17517 scales and in effect	Rates in effect from Ga. points shown on basis of Ga. Comm. order	Amounts by which rates between Ga. points shown are less than 17517 scales
Ellenton, S. C.	Cornelia, Ga.	171	140		
Holton, Ga.	" "	s157		120	10
Pacolet, S. C.	" "	s118	110		
Norris, Ga.	" "	127		110	25
Beverly, S. C.	Gainesville, Ga.	s 84	100		
Elberton, Ga.	" "	s 87		90	10
Hellams, S. C.	" "	112	125		
Norris, Ga.	" "	126		110	25
Chehaw, Ala.	Cartersville, Ga.	185	145		
Junction City, Ga.	" "	152		120	20
Chattanooga, Tenn.	" "	s 89	100		
Helmer, Ga.	" "	66		80	25
Columbia, S. C.	Athens, Ga.	161	140		
Fairmont, Ga.	" "	141		120	15
Montgomery, Ala.	Atlanta, Ga.	s176	135		
Junction City, Ga.	" "	s104		100	10
Montgomery, Ala.	Milledgeville, Ga.	226	150		
Ft. Gaines, Ga.	" "	s176		130	5
Birmingham, Ala.	Augusta, Ga.	337	180		
Georgetown, Ga.	" "	226		160	10

From	To	Miles	Interstate rates on basis of 17517 scales and in effect	Rates in effect from Ga. points shown on basis of Ga. Comm. order	Amounts by which rates between Ga. points shown are less than 17517 scales
Chehaw, Ala.	Macon, Ga.	153	140		
Fairmont, Ga.	" "	153		120	20
Montgomery, Ala.	Columbus, Ga.	s 95	100		
Georgetown, Ga.	" "	90		90	25
Birmingham, Ala.	" "	s159	130		
Holton, Ga.	" "	109		100	25
Chehaw, Ala.	Cordele, Ga.	148	140		
Lithonia, Ga.	" "	160		120	20
Ellenton, S. C.	Savannah, Ga.	103	125		
Norris, Ga.	" "	152		120	20
Montgomery, Ala.	Vidalia, Ga.	s258	150		
Ft. Gaines, Ga.	" "	189		130	15
Columbia, S. C.	" "	184	145		
Birmingham, Ala.	Quitman, Ga.	329	180		
Fairmont, Ga.	" "	312		180	5+
Montgomery, Ala.	Pelham, Ga.	183	145		
Norris, Ga.	" "	212		140	10
Montgomery, Ala.	Dawson, Ga.	s126	120		
Junction City, Ga.	" "	84		90	25

Copperhill, Tenn.	Newman, Ga.	159	140		
Norris, Ga.	" "	168		130	10
Birmingham, Ala.	Atlanta, Ga.	s167	130		
Dry Ridge, Ga.	" "	130		110	25

+ Georgia rate higher than 17517 scale.

s Single line.

* The present rate from Montgomery to Atlanta is $1.30. That rate is the 17517 single-line rate for 175 miles which distance was used by the respondents as being correct from Montgomery to Atlanta when this rate was established. At the further hearing respondents claimed, which claims was disputed by the Montgomery complainants, that a recalculation shows the correct distance between these points as 176 miles. The 17517 single-line scale rate for 176 miles is $1.35. However, it was stated on oral argument that the subsequent attempt made by respondents to increase this rate to $1.35 was enjoined by this District Court of Alabama.

[fol 112] Exhibits were introduced by respondents showing the rates from Gaillard, Junction City, Lumber City, Stockbridge and Lithonia to hundreds of points in Georgia located on various lines. These rates are on the basis of the Georgia commission's scale. They show that where the hauls are single-line the rates are in most instances on the basis of the 17517 single-line scale, although there are numerous instances where they are 10 cents under that scale. Where joint hauls are involved there are some instances where they are 5 cents less than the 17517 scale, but as a general rule they range from 10 to 25 cents less than that basis.

During the 4 months period ended April 30, 1928, 1,289 shipments of sand, gravel and crushed stone moved exclusively over the line of the Southern Railway between points in Georgia. That line also participated in the joint line movement of 3,111 shipments between Georgia points. The Georgia Southern & Florida Railway originated and delivered 124 and participated in the joint-line movement of 583 shipments moving between Georgia points. During the same period the entire Southern Railway System originated and delivered 12,817 shipments and participated in the joint movement of 14,977. These figures indicate a substantial joint-like movement of this traffic.

It was computed that the 17517 basis of rates, if applied to 2,342 carloads of this traffic which originated in Georgia on the Southern, including shipments received by that line from the Gainesville & Northwestern at Gainesville, Ga., during the 4-months period ended August 31, 1928, would have produced $12,000 more revenue than was produced by the application of the Georgia scale. This is equivalent to $36,000 computed on an annual basis.

This traffic is important to the Seaboard Air Line. During the year 1927 that line handled 5,213,183 tons of these materials which was equivalent to 25.5 per cent of its total tonnage for that period. The Seaboard has important pro- [fol 113] ducing points on its line in Georgia, for example, at Oglesby, Ladds and Portland, Ga.; and outside of Georgia, within competing range, at such points as Birmingham, Montgomery and Ragland, Ala.; and at Columbia and Samlaw, S. C. During the 5-months period ended May 31, 1928, the Seaboard handled 14,892 tons of slag from Alabama producing points to points in Georgia. These

slag shipments were charged the 17517 basis of rates and produced revenue amounting to $21,196. The application of the Georgia scale to this movement would have produced $617 less revenue.

During the 6-months period ended June 30, 1928, 23,096 tons of sand and gravel moved from Alabama producing points to Georgia destinations. Most of this tonnage moved from Montgomery. Charges were assessed on these shipments based on the 17517 scales and amounted to $32,778. The application of the Georgia scale to this movement would have produced $2,511 less revenue, or a decrease of 7.7 per cent. Duing the months of May, June, July and August, 1928, a period immediately succeeding the date when the Georgia scale became effective, 50,687 tons of crushed stone, sand and gravel originated at producing points in Georgia on the Seaboard and moved to destinations in Georgia. Charges were collected on these shipments based on the Georgia scale. Such charges were $7,307 less than they would have been if based on the 17517 scales. This is equivalent to about $22,000 computed on an annual basis.

The Georgia Railroad and the Atlanta & West Point are located entirely within the State of Georgia. There is a large interstate movement of this traffic from the Montgomery district over the Western Railway of Alabama in connection with the Atlanta & West Point. During the year 1927, the Georgia Railroad, Western Railway of Alabama and the Atlanta & West Point handled 507,753, 714,148 and 397,380 tons of these commodities which constituted 17.03, [fol. 114] 29.99 and 20.78 per cent of the total tonnage handled by each respectively during that period.

During the 4-months period ended August 31, 1928, 100,515 tons of these commodities originated on the Georgia Railroad and moved to points in Georgia. Charges were assessed on this movement based on the rates under the Georgia scale. They are shown to be $9,148 less than would have accrued on the basis of the 17517 scales. This is equivalent to approximately $27,500 computed on an annual basis.

Testimony of various Georgia producers shows that prior to the going into effect of the prescribed interstate basis of rates these Georgia producers shipped extensively into Alabama but that they are now marketing nearly all of their

production within Georgia. This indicates that the differences between the interstate and Georgia intrastate rates have brought about a diversion of much of this traffic from interstate to intrastate channels.

The Roquemore Gravel Company, complainant in No. 17763, produces sand and gravel in very large quantities at its plant at Montgomery. Testimony given for this complainant at the original hearing was to the effect that it endeavors to sell its product in as wide a territory as possible, including Georgia, and that in this endeavor it encounters actual or potential competition from producers of competing materials wherever located. The evidence produced at the further hearing shows that under normal conditions about 50 per cent of the movement from this complainant's plant is to Alabama points and about 25 per cent to Georgia points. Because of the highway and structural development taking place in Georgia that State is increasing in importance as a market for these materials. As previously stated, there is keen competition between the Georgia producers and those located outside that State. The Montgomery complainant maintains sales organizations at Atlanta and Albany, Ga., at an approximte cost of $20,000 [fol. 115] per year. Such agencies keep in close touch with construction programs in the State and aid in securing sales contracts for this complainant. As a general rule the distances from Montgomery to Georgia consuming points are greater than from Georgia producing points. In the past complainants' shipments to Georgia have been chiefly to Atlanta and points south thereof. Complainant now attempts, however, to market its products at all points in Georgia with the exceptions hereinafter noted.

It was testified that complainant has to absorb freight-rate differences to all points in central Georgia and that this is more or less the case at all points in Georgia where it now does business, the amounts of absorptions depending upon supply and demand. Complainant does not attempt to do business at northern Georgia points, as it is unable to compete with northern Georgia stone producers because of the amounts of freight rate differences. With equality of both interstate and intrastate rate levels, however, complainant expects to be able to compete throughout the entire State of Georgia.

A producer of clay gravel located at Ellenton, S. C., about 22 miles east of Augusta, Ga., testified that for many years in the past the bulk of his shipments has been made to Georgia destinations, chiefly to points in the coastal section; that various rate changes have had the effect of curtailing his Georgia business but that the effect of the Georgia intrastate rates established May 1, 1928, was to exclude him entirely from the Georgia markets; and that he has done no business in Georgia since that time. This producer mentioned certain orders which he had for Georgia business that were canceled when the Georgia rates became effective. To illustrate the rate differences, this witness compared the rates from Norris, Ga., a competitive clay gravel producing point, to various points in Georgia with rates from Ellenton to the same points. For example, the rate from Ellenton to Savannah, 103 miles, is $1.25, while the [fol. 116] rate from Norris to Ellenton, 152 miles, is $1.20. This shipper advocates uniformity in the intrastate and interstate rates.

The testimony of a producer of clay gravel at Steel Creek, S. C., 30 miles from the Georgia State line, was to the same general effect as that of the Ellenton producer.

A witness for a crushed stone producing plant located at Columbia, S. C., about 80 miles from the Georgia State line, testified that his plant has in the past made shipments to Georgia points, and continues to ship a small tonnage to Savannah. He cited Georgia destinations which are nearer Columbia than they are to various Georgia originating points but to which destinations the rates are higher from Columbia. This witness is interested in securing future business in Georgia and advocates the same level of rates for both interstate and intrastate application. A witness for complainant in No. 17763 with a sand and gravel plant at Chattanooga and close to the Tennessee-Georgia State line desires that the Georgia intrastate rates be harmonized with the present interstate rates. This witness stated he is now handicapped in shipping to Georgia by reason of the lower scale available to Georgia shippers.

In nine instances during 1927, when the Birmingham slag interests submitted bids for supplying material for different Georgia projects the Georgia producers were the successful bidders. At that time the average rate from the

plants of the successful Georgia bidders to the points of unloading was $1.03 for an average distance of 83 miles. Under the Georgia commission scale of May 1, 1928, the average rate between these points became 96 cents. Under 17517 basis it would be $1.15.

Sand is produced in large quantities at Junction City, Ga., and at various points within a few miles from that point. Junction City is located on the Atlanta, Birmingham & Coast and the Central of Georgia. However, there are no facilities for the interchange of traffic between these [fol. 117] lines at Junction City. Several of the producing points within the Junction City district are located on the Central of Georgia and within 2 to 4 miles from Junction City. Producers in the Junction City district ship chiefly to Atlanta, which is the chief market for this traffic in the South. The evidence indicates that the Junction City district shippers exert a strong influence in the control of sand prices in the Atlanta market. The short-line route from Junction City to Atlanta is via the Atlanta, Birmingham & Coast, 104 miles. The rate in effect under the Georgia scale for that distance is $1.00 while the rate under the 17517 scale would be $1.10. However, this $1.00 rate is also applied over the Central of Georgia to Atlanta from Junction City and other nearby shipping points on that line. The approximate average distance of such hauls is 164 miles and the 17517 single-line rate for that distance is $1.30. The evidence of record indicates that the application of the $1.00 rate from the Central of Georgia points was made at the suggestion of the Georgia commission. Moreover, this $1.00 rate is applied over various joint-line routes which enables the Junction City district shippers to secure deliveries at that rate at numerous points located on various lines in the Atlanta district. Under the 17517 joint-line scale the rates for these joint-line hauls would range from $1.30 to $1.40.

Sand is also produced in substantial quantities at Rollo and Allon, Ga. It is shipped from Gaillard, Ga., a nearby point located on the Southern. The chief market for these producers is also Atlanta and there is keen competition at this market between them and the Junction City district shippers. The short-line distance from Gaillard to Atlanta is over the Southern, 94 miles, and the rate is $1.00 under

the Georgia scale, the same as it would be under the 17517 single-line scale. The $1.00 rate applies only over the Southern. When delivery is made on a connecting line in Atlanta the Southern absorbs the switching charge to the [fol. 118] extent of $2.25 per car in order to meet competition from Junction City district points on the Central of Georgia. If the 17517 rates were applied from both Junction City and Gaillard to Atlanta the latter point would have a 10 cent lower rate than Junction City. The Gaillard shippers assert that it is unfair to group them with the Junction City shippers to Atlanta, as is done under the Georgia scale and that such grouping promotes unfair competition, and unjustly discriminates against them, which condition is further aggravated by the manner above noted in which the Georgia scale is applied from the Junction City district. They desire a basis of rates which will accord them the advantages to which their location entitles them. They urge the establishment of a uniform basis of rates for application to both intrastate and interstate traffic and counsel for these producers urges on brief that this uniformity should be here accomplished by placing the intrastate rates on the approved interstate level. It is argued that if the rates on this traffic within Georgia should here be permitted to continue on a lower level that the interstate basis the result will be to disrupt the entire rate situation in other southern States.

Respondents also urge with much force that we should consider not only the effect that a failure here to condemn the Georgia intrastate rates would have upon their revenue but also other results which would likely follow such action. Authorities of other southern States, they say, would naturally feel at liberty, in such an event, to promulgate other and different scales of intrastate rates on this traffic, the final result being that the general basis prescribed by this commission after an exhaustive investigation and much labor would be effectively whittled away and uniformity defeated.

The chief defense here offered for the action of the Georgia commission in failing to authorize the application of the 17517 scales within Georgia appears to rest on the [fol. 119] following grounds: (1) There are various producing plants in Georgia that are so located that many

destinations to which they ship or hope to ship are only reached by joint-line routes and it is desirable that such producing points should pay rates to such territory no higher than would Georgia plants having single-line hauls of approximately the same length to the same destinations in order to prevent discrimination between Georgia plants.

(2) That certain interstate shipping points would be able to reach various destinations in Georgia over single-line routes and at lower rates than could certain competing Georgia plants. Data were introduced to show such situations and the single-line mileage available within Georgia to certain Georgia producing plants as compared with the single-line mileage available within Georgia from Birmingham, Montgomery and Chattanooga. Many of the single-line routes shown from the interstate points are so circuitous that they would not be used.

(3) That it is not now the policy of the Georgia commission to authorize joint-line differentials.

(4) That the scale prescribed by the Georgia commission is reasonable and is better gradated than are the 17517 scales.

In the original report in these proceedings we gave careful consideration to the question of whether joint-line arbitraries should be prescribed on this traffic. Various cases were referred to in which we prescribed one scale for both single-line and joint-line application on higher grades of traffic, but after mature consideration, we there reached the conclusion that on this low grade traffic joint-line arbitraries should be prescribed. It might also be added that most of the interests represented there advocated the prescription of joint-line arbitraries. The fact is we have never prescribed for general application in any territory one scale for both single-line and joint-line hauls of this traffic. It is apparent that certain interstate shippers, due [fol. 120] to their location, are now able to ship to certain destinations over single-line routes and by reason of that fact have a rate advantage over other interstate shippers who are compelled to ship over two or more lines to the same points. Several of such instances appear of record. However, no interstate shippers are complaining of that situation. Such advantages are not undue.

Moreover, for the purpose of negativing the contention here made by the Georgia interests concerning the single-line mileage available from certain interstate points to destinations in Georgia, a witness for the Birmingham Slag Company introduced certain statements showing the extent to which the joint-line scale and the single-line scale apply from the principal interstate points to points in Georgia. It is shown that from Alabama City the joint-line scale would apply to 5683 miles within Georgia as compared with 1024 miles to which the single-line scales would apply. From Montgomery the ratio would be 4695 joint-line and 1980 single-line mileage, and from Birmingham 4581 joint-line and 2084 single-line.

It is here argued in connection with the matter set forth above as a defense for the action of the Georgia commission that we should not substitute our judgment for that of the Georgia commission in such matters.

While weight and respect should be given to orders of a State commission, its decisions are not controlling upon issues raised in cases before us. We are charged with various duties, among which is that to remove "any undue, unreasonable or unjust discrimination against interstate or foreign commerce." The real question here is whether the order of the Georgia commission, here considered has brought about an intrastate rate structure on this traffic within Georgia which, in its relationship to the approved interstate rate structure, has resulted and results in an unlawful situation which should be removed.

[fol. 121] The original report in these proceedings provided that in computing distances for the application of the 17517 scales the shortest routes shall be used over which carload traffic can be moved without transfer of lading. We meant by that provision, and the respondents so construed it, that the shortest single-line route over which carload traffic could be moved without transfer of lading should be used in connection with the single-line scale, and the shortest joint route over which carload traffic could be moved without transfer of lading should be used in connection with the joint-line scale.

In checking in rates under this formula the respondents found, of course, that the lowest rate between two points made in some instances over single-line routes while in other instances, the lowest rate made over joint-line routes.

In order that other routes might participate in the movement of this traffic between competitive points by meeting the rates of the rate-making route, we, upon application of respondent carriers, subsequently granted by appropriate fourth-section orders, certain relief from the provisions of the fourth section of the act. This relief authorized said respondents to maintain on this traffic from any point of origin to any point of destination within the scope of the proceeding the lowest rates applicable over any routes between the same points constructed on the basis prescribed in the report and to maintain higher rates, not exceeding the scale basis, from, to and between intermediate points. The fourth-section relief sought and granted was based on various considerations besides circuity. For instance, we had authorized joint-line differentials in these proceedings in consideration of the extra cost incurred by respondents in interchanging traffic from one to the other. It would have been impossible for joint-line carriers to have met competition of single-line routes and obtain these differentials without fourth-section relief. As stated in Memphis-Southwestern Investigation, 77 I. C. C. 473, 523, relief [fol. 122] sought in such situations "is not based upon the ground of circuity but upon the different circumstances and conditions in connection with joint-line hauls and the additional cost of service incident thereto."

The relief granted was, however, made subject to certain circuity limitations.

Much testimony and data were submitted on behalf of the Georgia commission and certain Georgia interests setting forth interstate rates applicable on this traffic over various routes between many points in this territory. This evidence is submitted to support the contention here made that carriers are maintaining numerous interstate rates on this traffic which are below the level of the 17517 scales. An examination of this data discloses that with few exceptions the instances given are simply where different routes are, under the authorized fourth-section relief above referred to, meeting at competitive points the rates set by the rate-making route, and applying at intermediate points the authorized scale basis. It readily can be understood that if this relief were not accorded, the rate-making route would secure all of the traffic between competitive points. It is our usual practice, subject to appropriate limitations, to

grant relief from the provisions of the fourth-section in such situations as here disclosed. In applying within Georgia the scale prescribed by the Georgia commission here in question, the carriers have the right, if they see fit, to meet at competitive points the rates maintained by the rate-making route. The argument here advanced that our findings and order require the maintenance over all routes between two given points of the rate established via the rate-making route is without merit.

The evidence in this case shows that with comparatively few exceptions, consideirng the extent of the territory covered, the carriers have checked in over the rate-making routes throughout the territory considered in the original proceedings interstate rates which are on the basis of the [fol. 123] 17517 standard-line scales. Carriers explain that the instances where such rates are off the approved basis are the result of errors which will be corrected.

There is some evidence to the effect that certain of the so-called short or weak lines named in the original report are not, due to competitive conditions, assessing the 25-cent arbitrary which we there gave them authority to charge in addition to the standard-line rates. Our findings and order herein, however, will automatically adjust themselves to situations where a short or weak line does or does not assess the arbitrary.

Summing up the situation, the evidence shows on the whole that the respondents and defendants, in publishing the interstate rates, have conformed to the thought which we had in mind when we prescribed these scales, which thought it embodied in the following expression found at page 148 of the original report:

While we shall not prescribe minimum rates, we shall prescribe a scale which takes fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result, ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic.

It is also pointed out on behalf of the Georgia interests that there are many instances where the Georgia scale re-

sults in the same rates as would the 17517 scales. That situation only arises where the single-line rates for certain distances are the same under both scales. As stated by the United States Supreme Court in Wisconsin R. R. Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563, 579:

Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute.

[fol. 124] Upon brief filed in this proceeding on behalf of the Georgia commission it is stated:

The Georgia commission has not claimed, and is not here claiming that there should be a different basis of rates on intrastate commerce in Georgia than on interstate traffic into Georgia and out of Georgia or across Georgia. It is simply the position of the Georgia commission that the rates required to be maintained by its order and the rates now in effect within the State of Georgia are just and reasonable rates, sufficiently remunerative to the carriers, and not discriminatory against or prejudicial to interstate commerce or preferential to state shippers.

As heretofore stated, we found in the original report that there is no transportation reason for the maintenance of a basis of intrastate rates on these commodities within Georgia different from that there found reasonable for interstate transportation.

We find that the circumstances and conditions affecting intrastate transportation within Georgia and interstate transportation between points in Georgia, and from points in other States, in southern territory, except Florida, to points in Georgia, are substantially similar.

We further find that respondents' rates applicable to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in carloads, between points in Georgia, to the extent that they are lower, distance considered, than the interstate rates contemporaneously applicable to the transportation of the same commodities between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore

found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities, in straight or mixed carloads, according as said respondents participate in said intrastate and said interstate transportation, [fol. 125] result and will result in undue preference and advantage of shippers and receivers of freight in intrastate commerce within the said State of Georgia and in undue prejudice to shippers and receivers of freight in interstate commerce between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in Georgia, and in unjust discrimination against interstate commerce.

We further find that said undue preference and undue prejudice and unjust discrimination can and should be removed by the establishment, maintenance and application to intrastate traffic between points in the State of Georgia of rates which shall not be lower, distance considered, than those contemporaneously applicable to the transportation of interstate traffic between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found reasonable in these proceedings for said interstate transportation.

We further find that the rates maintained and applied by defendants in No. 17763 to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel and crushed stone, in carloads, from and to points of origin and destination in Georgia, to the extent that they are lower, distance considered, than the interstate rates contemporaneously applicable to the transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., to the same destinations in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17763 for the interstate transportation by the said defendants of the said commodities from Montgomery, Ala., in straight or mixed carloads, according as said defendants participate in said intrastate and said interstate transportation, result [fol. 126] and will result in undue preference and advantage of intrastate shippers between points of origin and destination in Georgia and in undue prejudice and disad-

vantage to complainant Roquemore Gravel Company at Montgomery in shipping in interstate commerce to the same destinations in the State of Georgia.

We further find that said undue preference and advantage and undue prejudice and disadvantage can and should be removed by the establishment, maintenance and application by said defendants on the aforesaid intrastate traffic from points of origin in Georgia to destinations in the State of Georgia of rates which shall not be lower, distance considered, than those contemporaneously applied to the transportation of the aforesaid interstate traffic from Montgomery, Ala., to the same destinations in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found reasonable in these proceedings for said interstate transportation.

The evidence presented does not here justify a finding that the minimum weight prescribed by the Georgia commission results or will result in undue preference and advantage to Georgia shippers or in unjust discrimination against interstate commerce; nor does the record afford a sufficient basis for a finding of undue prejudice respecting the rates from Chattanooga.

An appropriate order will be entered.

Commissioners Aitchison and Campbell dissent.

[fol. 127] Order

At a General Session of the Interstate Commerce Commission, Held at Its Office, in Washington, D. C., on the 9th Day of December, A. D. 1929

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

No. 17763

Roquemore Gravel Company, Alabama Sand & Gravel Company, and Dixie Sand & Gravel Company

v.

Atlanta, Birmingham & Atlantic Railway Company and B. L. Bugg, Receiver; Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company, Central of Georgia Railway Company; Georgia Railroad, Georgia, Florida & Alabama Railway Company, Georgia and Florida Railway and John Skelton Williams, Receiver; Gulf, Mobile and Northern Railroad Company, Illinois Central Railroad Company, Louisville & Nashville Railroad Company, Macon, Dublin & Savannah Railroad Company, Mississippi Central Railroad Company, Mobile & Ohio Railroad Company, The Nashville Chattanooga & St. Louis Railway, New Orleans Great Northern Railroad Company, The Cincinnati, New Orleans & Texas Pacific Railway Company, The Alabama Great Southern Railroad Company, New Orleans & Northeastern Railroad Company, St. Louis-San Francisco Railway Company, Seaboard Air Line Railway Company, and The Western Railway of Alabama.

It appearing, That on January 21, 1927, the commission made and entered its report and orders in the above-entitled proceedings, and on March 5, 1928, made and filed its report and order on further hearing in No. 17517, and that by order entered June 4, 1928, these proceedings [fol. 128] were reopened for further hearing upon the questions stated in the aforesaid order of June 4, 1928;

It further appearing, That such further hearing has been had, and that the commission has, on the date hereof, made and filed a report on further hearing containing its further findings of fact and conclusions thereon, which said report and the aforesaid reports of January 21, 1927, and March 5, 1928, are hereby referred to and made parts hereof.

It is ordered, That the carriers respondent in No. 17517, namely, Alabama Great Southern Railroad Company, Albany Passenger Terminal Company, Atlanta, Birmingham & Atlantic Railway Company, B. L. Bugg, Receiver; Atlanta Terminal Company, Atlantic Coast Line Railroad Company, Augusta Aiken Railway & Electric Corporation, Augusta Union Station Company, Augusta & Summerville Railroad Company, Atlanta & West Point Railroad Company, Arabia Granite Company, Bowden Railway Company, Central of Georgia Railway Company, Charleston & Western Carolina Railway Company, Chattahoochee Railway Company, Collins & Glenville Railroad Company, Elberton & Eastern Railroad Company, Flint River & Northeastern Railroad Company, Gainesville Midland Railway, Gordan C. Carson, Receiver; Gainesville Midland Railway, Wm. B. Veazey, Receiver; Georgia, Ashburn, Sylvester & Camilla Railway Company, Georgia, Florida & Alabama Railway Company, Georgia & Florida Railway, John Skelton Williams, Receiver; Georgia Northern Railway Company, Georgia Railroad, Georgia Southern & Florida Railway Company, Georgia, Southwestern & Gulf Railroad Company, Greene County Railroad Company, Hartwell Railway Company, Louisville & Nashville Railroad Company, Louisville & Wadley Railroad Company, Macon, Dublin & Savannah Railroad Company, Macon Terminal Company, Millstead Railroad Company, Milltown Air Line Railway, Nashville, Chattanooga & St. Louis Railway, Sandersville Railroad Company, Savannah & Atlanta Railway, Chas. E. Gay, Receiver; Savannah & Atlanta Rail-
[fol. 129] way, T. B. Felder, Receiver; Savannah River Terminal Company, Savannah & Statesboro Railway Company, Savannah Union Station Company, Seaboard Air Line Railway Company, Shearwood Company, South Georgia Railway Company, Southern Railway Company, Statesboro Northern Railway, St. Mary's Railroad Company, Stone Mountain Granite Corporation, Sylvania Central Company, Talbotton Railroad Company, Tallulah

Falls Railway Company, J. F. Gray, Receiver; Tennessee, Alabama & Georgia Railway, Tennessee Electric Power Company, Union Point & White Plains Railroad Company, Wadley Southern Railway Company, Washington & Lincolnton Railroad Company, Waycross & Southern Railroad Company, Waycross & Western Railroad Company, and Wrightsville & Tennille Railroad Company, according as they participate in the said intrastate and the said interstate transportation, be, and they are hereby, notified and required to cease and desist, on or before March 3, 1930, and thereafter to abstain from publishing, demanding, or collecting, for the transportation of the commodities defined in the next succeeding paragraph, from and to the points there designated, rates which do not conform to the requirements of said paragraph.

It is further ordered, That said respondents, according as they participate in the transportation as aforesaid, be, and they are hereby, notified and required to establish, on or before March 3, 1930, and thereafter to maintain and apply to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in carloads, between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, in straight or mixed carloads, between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and hereto- [fol. 130] fore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities in straight or mixed carloads.

It is further ordered, That the above-named defendants in No. 17763, according as they participate in the said intrastate and the said interstate transportation, be, and they are hereby, notified and required to cease and desist on or before March 3, 1930, and thereafter to abstain from publishing, demanding, or collecting for the transportation of the commodities defined in the next succeeding paragraph, from and to the points there designated, rates which do not conform to the requirements of said paragraph.

It is further ordered, That said defendants, according as they participate in the transportation as aforesaid, be, and they are hereby, notified and required to establish, on or before March 3, 1930, and thereafter to maintain and apply to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel and crushed stone, in carloads, from points in the State of Georgia to destinations in that State, rates which shall not be lower, distance considered, than the interstate rates contemporaneously maintained by said defendants on sand, gravel (washed or unwashed) and clay gravel, in straight or mixed carloads, from Montgomery, Ala., to the same destinations in Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17763 for the interstate transportation by said defendants of the said commodities from Montgomery, Ala., in straight or mixed carloads.

It is further ordered, That the foregoing order shall continue in force and effect until the further order of the commission.

By the Commission.

George B. McGinty, Secretary. (Seal.)

Docket No. 17517.

[fol. 131] Appendix

Distance scales of rates prescribed in original report for interstate transportation by respondents in No. 17517, of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other States in southern territory, except Florida; and also prescribed for interstate application by defendants in No. 17763, and by defendants in certain other complaints, on sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi:

Table A

Distance Scales for Interstate Application Over Standard or Trunk Lines

Rates are in cents per net ton, as follows:

Distance	Single-line rate, Cents	Joint-line rate, Cents
10 miles and under	50	65
20 miles and over 10	55	70
30 miles and over 20	60	75
40 miles and over 30	70	85
60 miles and over 40	80	95
80 miles and over 60	90	105
100 miles and over 80	100	115
125 miles and over 100	110	125
150 miles and over 125	120	135
175 miles and over 150	130	140
200 miles and over 175	135	145
230 miles and over 200	140	150
260 miles and over 230	150	160
290 miles and over 260	160	170
320 miles and over 290	165	175
360 miles and over 320	175	180
400 miles and over 360	185	190
440 miles and over 400	195	200
480 miles and over 440	205	210
520 miles and over 480	215	215
560 miles and over 520	225	225
600 miles and over 560	235	235
640 miles and over 600	245	245
680 miles and over 640	255	255
720 miles and over 680	265	265
760 miles and over 720	275	275
800 miles and over 760	285	285

[fol. 132]

Table B

When the transportation is in whole or in part over either of the so-called short lines shown in Appendix B to the original report rates are to be determined as follows:

Apply the rates under appropriate scale or scales above set forth in Table A, plus the following arbitrary which is to accrue solely to the short line: Arbitrary, 25 cents per net ton.

[fol. 133] EXHIBIT E TO BILL OF COMPLAINT

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

Docket No. 17763

ROQUEMORE GRAVEL COMPANY et al.

vs.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

Petition by Georgia Public Service Commission for Rehearing, etc.

The Georgia Public Service Commission, by its chairman and undersigned counsel, respectfully represents:

I

The report of the Interstate Commerce Commission in the above entitled proceedings on further hearing, entered December 9, 1929, and the order based thereon, are erroneous in law, contrary to and not supported by the evidence, and should be vacated and set aside.

II

The aforesaid report and the aforesaid order of December 9, 1929, of which the Commission's previous reports entered herein under date of December 21, 1927, and March 5, 1928, are made a part, are not clear, definite and free from ambiguity. Your petitioner is unable to determine with certainty from the text of the aforesaid order what rates for the interstate and intrastate transportation of the

[fol. 134] materials in question within the State of Georgia and in surrounding territories the respondents are required by the order to maintain, as specific rates, as maximum rates, or as minimum rates.

III

The statutes of the State of Georgia regulating the railroads which are respondents herein as to their intrastate transportation and rates, provide certain methods for publishing and maintaining lawful schedules of such rates for such intrastate transportation; and the state law and the regulations and practices thereunder are not the same as, or analogous to, section 6 of the Interstate Commerce Act and the Commission's regulations and the practices thereunder.

It is not clear from the aforesaid order and decisions of this Commission herein as to the manner and form in which the respondents are required to publish and maintain or to evidence the publication and maintenance of such rates for intrastate transportation contemplated by the Commission's decision. It is important to the shippers and receivers of freight in the State of Georgia, to the producers, consumers and users of these materials, and to the Georgia Public Service Commission that there shall be certainty as to the legal rates in effect and maintained within the State of Georgia. That there may be no uncertainty, it is essential to know where and in what manner the legal rates are to be published hereafter under the Commission's order. Petitioner therefore inquires whether it is the expectation of this Commission that the respondents will comply with the aforesaid order, or as the same may be later amended, by publishing and filing with the Interstate Commerce Commission at Washington, schedules intended to show the legal rates for intrastate transportation in Georgia, independently of the requirements of the statutes of said state.

[fol. 135] Your petitioner is unable to accept and approve any schedules which may be tendered to it for acceptance and approval by any of the respondents herein for the intrastate transportation of these materials in Georgia which violate the terms of the Georgia Public Service Commission's outstanding orders presently in effect, including its

order of March 13, 1928, in the proceeding known as No. 16384.

IV

The aforesaid order of the Commission entered December 9, 1929, requires the respondents to cease and desist on or before March 3, 1930, and thereafter to abstain from publishing, demanding or collecting for the transportation of sand, gravel, etc., in intrastate commerce between points in the State of Georgia, any rates which do not conform to the requirements of the order. The said order affirmatively requires the respondents to establish on or before said date and thereafter to maintain and apply to the aforesaid intrastate transportation of said materials between points in Georgia—

"Rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities * * *, not exceeding the rates set forth in the appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities * * *".

Your petitioner presumes that this portion of the aforesaid order is intended to require respondents to establish and charge on intrastate movements in Georgia: (a) rates which are no lower, distance considered, than the rates which the respondents contemporaneously apply to interstate transportation; and (b) rates no higher than set forth in the appendix to said report. Under such interpretation, however, the order is indefinite, uncertain, and invalid; and [fol. 136] if that is not the true construction, it should be made clear by additions or amendments.

(a) As to the rates which respondents apply to interstate transportation: The respondents, severally and collectively, apply to the interstate transportation of these materials in Georgia territory, varying rates for the same distances and they do not now adhere to any scale of rates for the distances transported over the actual routes of movement. As to which of these varying rates contemporaneously applied by respondents to the actual interstate transportation are to be accepted and used as the measure

to which the state rates for comparable distances must conform is not stated in the report or definitely ascertainable. Is it then really intended that the respondents shall establish, on intrastate movements in Georgia, rates which are no lower, distance considered, than the maximum scale of rates which govern the shortest physical routes that might be used (and in some cases are used for some of the traffic), in interstate movement? That is to say, shall the interstate rates which have been prescribed as maximum for the shortest interstate routes but are actually applied over the longer interstate routes, be imposed as minimum rates in Georgia? If so, the Georgia Commission would be enjoined from requiring certain respondents to charge for certain distances in Georgia, rates of the same measure which the Commission permits them to continue charging on interstate traffic for the same actual distances.

(b) As to the rates set forth in the appendix to said report: It will be observed that the appendix does not define or prescribe the formula by which the scales of rates therein set forth are to be applied. This omission is embarrassing because, as your petitioner interprets the respective reports of December 21, 1927, and of December 9, 1929, there is a conflict between them, which we think should be removed and the orders clarified by specific statement of the mileage formula in the appendx to the [fol. 137] order of December 9, 1929. The original report on page 166 in setting forth the so-called mileage scales, prescribes the formula by which those scales are to be applied and governed. This formula enforces the use, over the routes which transport the traffic, of a rate ascertained by use of the distance over the shortest route by which carload traffic can be transported without transfer of loading. This is interpreted on mimeograph sheet 13 of the report of December 9, 1929, as follows:

"We meant by that provision, and the respondents so construed it, that the shortest single-line route over which carload traffic could be moved without transfer of lading should be used in connection with the single-line scale, and the shortest joint route over which carload traffic could be moved without transfer of lading should be used in connection with the joint-line scale."

That much of the interpretation is clear and is accepted by your petitioner. But after taking the single-line scale and distance and the joint-line scale and distance, what use is made of them in respect of the rates actually published by the respective carriers over their several routes? The report then continues:

"In checking in rates under this formula the respondents found, of course, that the lowest rate between two points made in some instances over single-line routes while in other instances, the lowest rate made over joint-line routes."

That fact is also true, that the use of the single-line scale against the single-line mileage would sometimes make lower, and the use of the joint-line scale against joint-line mileage would sometimes make lower, between given points of origin and destination. But the report does not state whether the Commission was undertaking to prescribe the rate from a given point of origin over the single-line route or over all routes by which the traffic actually was transported. Were the carriers free, as this interpretation would suggest, to charge over any route by which they [fol. 138] transport interstate traffic, the scale rate for the actual distance over that route? The quick answer would be affirmative; and that answer is implied in the ensuing sentence in the interpretation on sheet 13 of the report of December 9, 1929, reading as follows:

"In order that other routes might participate in the movement of this traffic between competitive points by meeting the rates of the rate making route, we, upon application of respondent carriers, subsequently granted, by appropriate fourth section orders, certain relief from the provisions of the fourth section of the Act."

But the answer in the affirmative to our question, namely, the statement that the carriers between a given point of origin and destination were privileged by the Commission's decision and order of December 21, 1927, to charge the actual scale rate for the actual distance over their route, single-line or joint-line, as the case may be, is directly contradictory and in violation of the express language of the aforesaid report of December 21, 1927, page 166:

"In computing distances for the application of the foregoing rates, we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading."

For illustration that the interpretation is erroneous (on sheet 13 of the report of December 9, 1929), of the letter of the findings and order of December 21, 1927, as entered, and that it is not the interpretation placed on the report by the carriers, we refer to the rates and routes from Montgomery, Alabama, to Augusta, Georgia: The shortest single-line route from Mongomery to Augusta is the Central of Georgia Railroad, 362 miles, which moves a great volume of materials. Did the Commission prescribe the maximum rate over that route, and if so, in what amount? We think it prescribed 175 cents per net ton under the language of page 166 of the decision of December 21, 1927. The Central of Georgia, has published and now maintains [fol. 139] 175 cents. There is a shorter route, however, of 317 miles from Montgomery to Augusta which would short-haul the Central of Georgia and which is not used, namely, Seaboard Air Line as initial carrier to Hurtsboro, Central of Georgia, as intermediate carrier, to Macon, and Georgia Railroad as delivering line. The joint-line scale applied to this distance makes 175 cents but that route would be objectionable also to the initial carrier in it, the Seaboard Air Line, because it would short-haul that carrier which undoubtedly would prefer to and does haul the traffic to Vidalia where it joins the Georgia & Florida Railroad, a relief line for which the weak line arbitrates were authorized in the report of December 21, 1927. If the Commission's order prescribed a rate from Montgomery to Augusta, by what route was this rate prescribed, and is it fair to consider that the other routes which published the same rates did so voluntarily and not because they were required so to do by the terms of the order?

We ask leave to present the following illustrations of the difficulty of interpreting the Commission's aforesaid order of December 9, 1929, by reason of its incompleteness and uncertainty. These are not presented as catch propositions but as typical cases from actual producing points involving the actual routes of movement, as well as the so-called southern class rate formula routes.

For illustration, from Stockbridge, Georgia, to Brunswick, Georgia, an intrastate route over the Southern Railway, the single-line distance is 256 miles, which is the shortest rail distance between those two points. The present rate actually in force over the Southern Railway is 160 cents per net ton, which is the maximum rate prescribed in the Georgia Commission's order of March 13, 1928. The single-line rate for that distance shown in the appendix to the Commission's order of December 9, 1929, is 150 cents per net ton. Does the report require or contemplate that the Southern Railway must reduce said rate for said intrastate transportation? If so, by what authority?

[fol. 140] Again, the interstate rate of the Atlantic Coast Line Railroad from Montgomery, Alabama, to Camilla, Georgia, a one-line haul of 244 miles, is 140 cents per net ton. That is the shortest single-line route from Montgomery to Camilla and there is a considerable movement over that route under the 140 cent rate. The rate for that distance under the appendix to the Commission's order of December 9, 1929, is 150 cents per net ton. On the other hand, within the State of Georgia, over the Atlantic Coast Line Railroad from Saffold, Georgia, to Fleming, Georgia, the actual distance is 244 miles, being also the short-line, and the present rate is 150 cents per net ton which is the maximum rate for that distance fixed by the Georgia Commission's aforesaid order of March 13, 1927. If, however, the Atlantic Coast Line Railroad is to comply with our interpretation of the order of December 9, 1929, is it to reduce its intrastate rate from Saffold to Fleming, 244 miles, to 140 cents per ton, because that is the rate which it is contemporaneously applying interstate for its single-line haul of 244 miles from Montgomery to Albany? If so, by what authority is such reduction in said Georgia intrastate rate? If not, why should the state rate exceed the interstate rate of the same railroad for the same distance?

The foregoing illustrations deal with single line rates maintained by the same carrier state and interstate. If one respondent charges a certain rate for a certain distance for interstate transportation, does the order of December 9, 1929, contemplate that other respondents shall maintain a corresponding rate for the same distances on their intrastate movements in Georgia, or is each respond-

ent simply required to maintain intrastate the same basis which it maintains interstate?

With respect to joint hauls: From Anniston, Alabama, to Atlanta, Georgia, the Lousiville & Nashville Railroad in connection with the Seaboard Air Line maintain a through route over which traffic moves freely, the distance [fol. 141] being 115 miles. The joint-line scale under the appendix to the order of December 9, 1929, for that distance, is 125 cents per net ton, but the said defendants maintain a rate for said interstate transportation of 110 cents per net ton. Does the order of December 9, 1929, require that the Louisville & Nashville and Seaboard Air Line, for intrastate transportation over joint-line routes within Georgia, shall charge more than their said interstate rate of 110 cents for said distance, or, in other words, does it require that they shall charge within Georgia the full rate of 125 cents prescribed as maximum for that distance in the appendix to the order of December 9, 1929? That is, what rates are said respondents required by said order to maintain for said distance in Georgia? For instance, from Elberton, Georgia, on the Seaboard Air Line, to Round Oak, Georgia, a joint-line distance of 112 miles, the present rate is 110 cents, being the Georgia Commission maximum rate for that distance under its order of March 13, 1928. Are these carriers to be required to charge 125 cents because that is the maximum rate for that distance under the appendix attached to the order of December 9, 1929, notwithstanding the joint rate of 110 cents now in effect for that distance from Anniston to Atlanta and notwithstanding the order of the Georgia Commission?

The Georgia, Southern & Florida Railroad is generally regarded as a part of the Southern Railway system. The Georgia Public Service Commission, however, is under restraint of a decision of the United States District Court for the Northern District of Georgia, preventing the enforcement as to intrastate traffic, upon the Georgia Southern & Florida Railroad, of a single line basis of rates with the Southern Railway. The decree was entered May 8, 1923, on the petition of the carrier. Georgia, Southern & Florida Railway Company, et al., v. Georgia Public Service Commission, et al., 289 Fed. Rep. 878. The record herein shows that the Southern Railway is voluntarily maintain-

[fol. 142] ing interstate rates on sand, gravel, etc., from Alabama points on its lines to destinations on the Georgia, Southern & Florida Railroad under the Commission's single line scale. The record in these proceedings does not contain a showing of facts as to whether, and from what point of view, the Georgia, Southern & Florida Railroad may be considered or ought to be treated as one line with the Southern Railway for purposes of applying sand and gravel rates under this Commission's decision herein. What rates are to be established and maintained under the Commission's order of December 9, 1929, for the intrastate movement of these materials in Georgia between points on the Georgia, Southern & Florida Railroad and points on the Southern Railway?

As a specific illustration, from Stockbridge, Georgia, to Cordele, Georgia, the distance is 134 miles via Southern Railway, in connection with Georgia, Southern & Florida. The present rate is 120 cents per net ton, which is the maximum rate under the Georgia Commission's order for that distance. This is also the single line rate under the appendix to the Commission's order of December 9, 1929. But the joint line rate for that distance under said order is 135 cents per net ton. Does the Commission's order supersede the decree of the court, and if so, we wonder upon what evidence it is though to rest.

The decision of December 9, 1929, refers on sheet 6 to the arbitraries over the so-called standard line scales authorized to so-called weak lines. The appendix to the order of December 9, 1929, provides in Table B for an arbitrary to the short lines or weak lines of 25 cents per net ton. One of the so-called weak lines or short lines in Georgia named in the Commission's original decision, 122 I. C. C., at page 175, is the Georgia & Florida Railroad. Another is the Wrightsville & Tennille Railroad. Neither of these railroads is now charging in its interstate rates any arbitrary over and above the so-called standard line basis. Does [fol. 143] the report require that they shall do so as to intrastate movements?

Specifically, take the Georgia & Florida Railroad. The published rate from Birmingham, Alabama, to stations on this railroad, Cottle, Georgia, to Sparks, Georgia, inclusive, is 175 cents per ton for distances ranging from 384 miles

to 392 miles. The maximum rate authorized by the scale printed as appendix to the order of December 9, 1929, for these distances, is 215 cents per ton, including the weak line arbitrary. What rates or what basis of rates shall be charged intrastate in Georgia to and from points on this and other so-called relief lines?

On sheet 14 of the tentative report, it is stated that the findings and order will automatically adjust themselves to situations where a short or weak line does or does not assess the arbitrary. The petitioner would like a definition of this automatic adjustment.

V

The present interstate schedules of the respondents for transportation of these materials in Georgia territory contain innumerable violations of the so-called long-and-short-haul clause of section 4 of the Act, and in particular contain many violations of the so-called circuity rule in said section. While the Interstate Commerce Act does not primarily relate to intrastate transportation, it may be pertinent to point out that in the present proceedings the Commission apparently undertakes to prescribe the specific basis of rates to be applied on intrastate transportation within the State of Georgia, and to such effort the language of paragraph (1) of section 4 appears to be applicable. This is to say, paragraph (1) of section 4 is not restricted in its terms to apply only to interstate transportation and if the Commission undertakes to fix the reasonable and proper rates for intrastate transportation under other sections of [fol. 144] the Act, it would appear that the provisions of the long-and-short-haul clause should attach thereto.

The aforesaid order of December 9, 1929, as interpreted by petitioner, will necessarily create violations of the aforesaid long-and-short-haul rule in the state rates in Georgia and violations of the circuity clause therein.

VI

It may be that the carriers may feel confident of the proper interpretation to be placed on the Commission's aforesaid order of December 9, 1929, and they may be willing to undertake their compliance therewith, notwithstand-

ing the provisions of the statutes of the State of Georgia regulating railroad transportation and rates within that state. If the respondents are willing to undertake compliance with said order without further interpretation or clarification thereof, or if this Honorable Commission is disposed to delegate to the carriers the working out of a complete schedule of intrastate rates ostensibly in harmony with the interstate schedules and without the aid or co-operation of the Georgia Public Service Commission, which has not been sought, nevertheless, your petitioner represents that the new schedules which the respondents may thereupon prepare may be found to contain and your petitioner believes they will contain (a) many rates for intrastate transportation in Georgia which are actually higher than the respondents are actually charging for interstate transportation for the same distances; (b) many rates for intrastate transportation for shorter distances that are greater than the rates for longer distances, over the same lines in the same direction, the shorter being included within the longer, in contravention of the long-and-short-haul rule; (c) many rates which are reduced only by ostensible authority of the order of the Interstate Commerce Commission, to bases lower than the full maximum rates heretofore [fol. 145] authorized by the Georgia Public Service Commission, and create thereby preference and discrimination as between different shippers and receivers of freight located within the State of Georgia; that is to say, by reducing certain state rates, this Commission will have created discriminations and preferences among state shippers.

Before the establishment of new schedules of intrastate rates should be permitted against the statutes of the State of Georgia and the regulations of the Georgia Public Service Commission thereunder, your petitioner respectfully submits that it is desirable that the Interstate Commerce Commission shall afford your petitioner an opportunity to criticize, or to indicate its acceptance or approval of, said new schedules of intrastate rates. Therefore, and predicated on the premises stated in this paragraph, your petitioner presents the suggestion set forth in numbered paragraph 2 of the prayer of this petition.

VII

The petitioner undertook at the hearings in this investigation before Examiner E. H. Waters, to present by competent witnesses all of the pertinent facts permitted under the restricted scope of the investigation, as the issues were defined by the Commission and its Examiner; and counsel for your petitioner undertook on brief and on argument to submit all of the general objections of law and propositions of fact which they, as the servants of your petitioner, were able to develop for the information and aid of this Commission in deciding this investigation.

Unless and until the Commission is willing to hear proper and competent evidence to show that the present existing rates for the transportation aforesaid within the State of Georgia are just and reasonable and sufficient rates, fully compensatory to the carriers for the services performed thereunder, that the rates apparently contemplated by its [fol. 146] order of December 9, 1929, would be unreasonable and respecting the reasonable level of interstate rates for transportation of said materials within territory including and contiguous to the State of Georgia, for the future from and after March 3, 1930, there is no further information that your petitioner desires to lay before the Commission.

VIII

The petitioner makes the following particular assignments of error against the Commission's aforesaid report and order of December 9, 1929:

(a) The Commission was without jurisdiction to enter the report and order and in effect to nullify or set aside the orders of the Georgia Public Service Commission prescribing maximum reasonable rates within said state, on the record as made, because of the limitations thereof and the refusal and failure of the Commission to receive evidence as to the reasonable level of said intrastate rates and as to the reasonable and proper level of interstate rates, for the future from and after the date when its orders are to become effective.

(b) The burden of proof is upon the respondent carriers in these proceedings, under section 15 of the Act, in as much as they relate to rates proposed to be advanced after January 1, 1910. This burden of proof has not been met by the carriers and was not imposed on the carriers by the Commission; and the record does not justify or support the advances in rates approved by the report and order.

(c) The report and order are erroneous because there is no basis of record for finding that the rates for the transportation of the materials in question made or imposed by authority of the State of Georgia, or any of said rates, cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and in-[fol. 147] terstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce.

(d) The report and order are erroneous because there is no basis for finding that the rates for the transportation of the materials in question actually charged by the respondents on intrastate traffic within the State of Georgia, or any of said rates cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce.

(e) The report and order are erroneous because the record on which they were entered does not show the transportation conditions, or th circumstances and conditions under which the materials actually are transported for the respective intrastate movements within the State of Georgia and does not therefore give a basis for determining the similarity or dissimilarity of the actual services under said intrastate rates, on the one hand, and under the interstate rates from and to points in other states, on the other hand.

(f) The report and order are erroneous because the Commission therein undertakes to require reductions in intrastate rates within the State of Georgia which are wholly beyond the jurisdiction of said Commission to reduce.

(g) The report and order are erroneous because the changes in intrastate rates therein required create unjust discriminations and tend to create undue preferences as among different and competing shippers and producers of said materials in Georgia, in violation of the statutes of the State of Georgia governing such intrastate transportation.

[fol. 148] (h) The report and order are erroneous because they would create violations of the principle of the long-and-short-haul provisions of section 4 of the Interstate Commerce Act. That is to say, rates will be published by the respondents if they comply with the letter of the aforesaid report and order, for the transportation of the said materials within the State of Georgia which will be higher for shorter distances than for longer distances over the same lines in the same direction, the shorter being included within the longer.

(i) The report and order are erroneous because they in effect undertake to substitute for the terms of the lawful order of the Georgia Public Service Commission prescribing maximum rates within said state, the terms of a formula devised by the Interstate Commerce Commission to govern as maximum the interstate rates. The Commission has no power to prescribe rate formulas as distinguished from maximum rates and minimum rates.

(j) The report and order are erroneous because they contemplate that rates for actual services of transportation over actual routes of movement shall be made with regard to fictitious mileage, that is to say, with regard to mileages over other routes that are not used and which could not be opened as through routes by this Commission without violation of the law, as defined by the Supreme Court in the so-called Subiaco case, 278 U. S. 269.

(k) The report and order are erroneous because in violation of the constitutional rights of the State of Georgia to regulate the rates for commerce within its borders.

(l) The report and order are erroneous because in effect they enjoin the Georgia Public Service Commission from requiring carriers within its borders to publish and maintain intrastate rates for given distances which are the same as the carriers are now charging for the same or comparable distances on their interstate traffic.

[fol. 149] (m) The report and order are not supported by evidence and are contrary to the manifest weight of the evidence in these proceedings.

(n) The report and order are unlawful and invalid for other and manifest errors of law and of fact.

Prayer

Wherefore the Georgia Public Service Commission respectfully prays:

I

That the Commission will vacate and set aside its aforesaid report and order entered December 9, 1929, which are erroneous in law, not supported by the record, and beyond the jurisdiction of the Commission; and that thereupon the Commission will discontinue the proceeding and will enter an order of dismissal thereof.

II

That if a rehearing is not granted and the aforesaid report and order are not vacated or modified, then that the Commission will enter its further order forthwith requiring the respondents severally and collectively to submit to the Commission and to the parties on or before a date certain, their suggested schedules of intrastate rates for the transportation aforesaid, which the respondents propose to establish in compliance with the Commission's decision, and that leave be granted to the petitioner and to other parties to the proceeding within twenty days or such other time as the Commission may consider reasonable, to present their specific objections and exceptions to said proposed schedules of intrastate rates, pointing out wherein they may be in violation of the terms of the Commission's order, or improperly related to the existing interstate rates or, vio- [fol. 150] lative of the long-and-short-haul principle, or otherwise contrary to the provisions of the law and to ac-

cepted principles of rate making, and that the effective date of the order of December 9, 1929, may be postponed for these purposes.

Dated at Atlanta, Georgia, this 11th day of January, 1929. Respectfully submitted.

Georgia Public Service Commission, by James A. Perry, Chairman. Luther M. Walter, Nuel D. Belnap, John S. Burchmore, Attorneys for Georgia Public Service Commission, Respondent. S. J. Smith, Special Attorney. Walter, Burchmore & Belnap, 1522 First Nat'l Bank Bldg., Chicago.

[File endorsement omitted.]

[fol. 151] IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE, ETC.—Filed Feb. 20, 1930

At Chambers, February 19, 1930

Let the petition in the above styled cause be filed. Let notice be given the United States by mailing a copy to the Attorney General, and the Interstate Commerce Commission by mailing a copy to its Secretary; and said defendants are required to show cause before the court composed as required by the statutes of the United States, at Chambers, New Orleans, Louisiana, on the 27 day of February, 1930, why a temporary restraining order and an interlocutory injunction shall not be issued.

It is further ordered that at such hearing testimony may be presented by affidavit.

Sam'l H. Sibley, United States District Judge, Northern District of Georgia.

[fol. 152] IN UNITED STATES DISTRICT COURT

ANSWER OF THE UNITED STATES OF AMERICA—Filed Feb. 27, 1930

United States, one of the defendants in the above entitled case, for answer to the bill of complaint heretofore filed therein, answers and says:

I.

United States admits for the purposes of this suit the allegations of the opening paragraph and paragraphs I to IX, both inclusive, of the bill of complaint.

Further and affirmatively answering the allegations contained in said paragraph VI, United States says that as alleged in said paragraph the first report and order of the Interstate Commerce Commission expressly stated that the Commission did not

> * * * deem it necessary to make any finding or enter any order in No. 17617 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved.

in its "Report of the Commission On Further Hearing" that Commission did find that the intrastate rates on the commodities therein mentioned within the State of Georgia were unduly preferential to intrastate shippers, unduly prejudicial to interstate shippers, and resulted in an unjust discrimination against interstate commerce, as is shown in said Report On Further Hearing, Exhibit D, pages 126-127 of the bill of complaint.

II

Answering paragraph X of the complaint, United States admits that further hearing was held as therein alleged at which further testimony was received from the various parties to the hearing, including the petitioners in this suit, and denies the remaining allegations and conclusions contained in that paragraph.

[fol. 153] III

For answer to paragraphs XI and XII of the complaint, United States admits that the Commission made and rendered the reports and orders referred to in those paragraphs, but respectfully refers the Court to said reports, Exhibit [illegible] to the complaint, and 140 I. C. C. 85, respectively, for full and complete statement and information

concerning what the Commission found and required therein.

IV

United States admits the allegations of paragraph XIII and XIV of the bill of complaint.

V

For answer to paragraph numbered XV of the bill of complaint, United States says that it is without sufficient knowledge of the things therein alleged to form a belief thereon, and, therefore, neither admits nor denies said allegations.

VI

United States denies each and all of the things and conclusions alleged in paragraph numbered XIV of the bill of complaint, and further and expressly denies that the order of the Interstate Commerce Commission is arbitrary, unreasonable or otherwise unlawful for the reasons in that paragraph alleged or any of them.

Wherefore, having fully answered, United States prays that the relief sought be denied and the bill of complaint dismissed with costs to petitioners.

Elmer B. Collins, Special Assistant to the Attorney General. John Lord O'Brian, The Assistant to the Attorney General. Clint W. Hager, United State Attorney.

[fol. 154] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 155] In United States District Court

Answer of Interstate Commerce Commission—Filed Feb. 27, 1930

The Interstate Commerce Commission, defendant in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the bill of complaint

contained, for answer thereunto, or unto so much or such parts thereof, as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs I, II, IV, V, VIII, XIII and XIV of the bill of complaint, the Commission admits that the allegations therein contained are true.

II

Answering paragraphs III, VI, VII, IX to XII, inclusive, XV and XVI of the bill of complaint, the Commission admits and alleges that it made and entered the order dated October 5, 1925, referred to in paragraph III, in a proceeding then pending before it entitled "Rates on Chert, Clay, Sand, and Gravel within State of Georgia, which embraced Dockets Nos. 17517 and 17763; that it made and entered the report and order dated January 21, 1927, referred to in paragraph VI of the bill of complaint, and made a part thereof as Exhibit A; that it made and entered the report and order dated December 21, 1927, referred to in paragraph XII of the bill of complaint; that it made and entered the report and order dated December 9, 1929, referred to in paragraphs XI and XIII of the bill of complaint, and made a part thereof as Exhibit D.

The Commission further alleges that said reports and orders of January 21, 1927, December 21, 1927, and December 9, 1929, were duly served upon the parties therein named; that said reports and orders were made and entered [fol. 156] in the proceedings filed in the Commission's office and numbered as aforesaid 17517; that prior to making, entering and serving as aforesaid said reports and orders of January 21, 1927, December 21, 1927, and December 9, 1929, the Commission accorded to all parties to said proceedings, including the complaints herein, at hearings in said proceedings, a full and fair opportunity to be heard upon all subject matters covered by the aforesaid reports and orders; that at said hearings a large volume of testimony and other evidence bearing upon said matters was submitted to the Commission for consideration on behalf of said parties, including the complainants herein, by their respective counsel; that at said hearings and subse-

quently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination, on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said reports and orders of January 21 and December 21, 1927, and December 9, 1929, which reports and orders included the Commission's decision, conclusions, orders, and requirements in the rpemises; and that upon the evidence aforesaid and as shown in and by said reports and orders of January 21 and December 21, 1927, and December 9, 1929, the Commission made the findings, stated the conclusions, and prescribed the rules and regulations, and terms and conditions upon which said orders are based.

The Commission further alleges that said findings, conclusions, rules and regulations, and terms and conditions were and are, and that each of them was and is, fully supported by the evidence submitted to the Commission in said proceedings as aforesaid, and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

Further answering paragraphs VI, IX and XII of the bill of complaint, the Commission respectfully refers the [fol. 157] court to the orders, and reports and orders, therein referred to for its requirements in the premises.

Further answering paragraph X of the bill of complaint, the Commission denies that material and competent evidence which was tendered by complainants was refused by the examiner and denies that incompetent, irrelevant, and immaterial evidence offered by the carriers was received by the examiner to the prejudice of said complainants.

Further answering paragraph XVI of the bill of complaint, the Commission denies that its reports and orders mentioned therein are, or that any of them is, either arbitrary, or unreasonable, or erroneous, or invalid, or unlawful for the reasons, or for any of the reasons stated in said paragraph, or for any other reason.

The Commission further alleges that, in making said reports and orders of January 21 and December 21, 1927, and December 9, 1929, it considered and weighed carefully, in the light of its own knowledge and experience, every fact, circumstance, and condition called to its attention on behalf of the parties to said proceedings, by their respective

counsel, including all matters covered by the material allegations of the bill of complaint herein.

The Commission further alleges that said orders of January 21 and December 21, 1927, and December 9, 1929, were not made and entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support them; that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner; and the Commission denies each of and all the allegations to the contrary contained in the bill of complaint.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the bill of complaint, in so far as they conflict either with the allegations herein or with either the statements or con-
[fol. 158] clusions of fact included in said reports and orders of January 21 and December 21, 1927, and December 9, 1929, which reports and orders are hereby referred to and made a part of this answer.

All of which matters and things the Commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that the bill of complaint herein be dismissed.

Interstate Commerce Commission, by E. M. Reidy, Attorney. Daniel W. Knowlton, of Counsel.

[fol. 159] *Duly sworn to by Ernest I. Lewis. Jurat omitted in printing.*

[fol. 160] IN UNITED STATES DISTRICT COURT

ANSWER OF ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Now come Atlantic Coast Line Railroad Company, a corporation under the laws of the State of Virginia, Louisville & Nashville Railroad Company, a corporation under the laws of the State of Kentucky, Atlanta & West Point Railroad Company, a corporation under the laws of the State of Georgia, Atlantic Coast Line Railroad Company and Louisville & Nashville Railroad Company, as Lessees of the Georgia Railroad, Seaboard Air Line Railway Company, a corporation under the laws of the State of Virginia, and Atlanta, Birmingham & Coast Railroad Com-

pany, intervenors in this cause, and respectfully aver that each of them is a common carrier by railroad, engaged in the carriage of each and all of the commodities involved in this cause, in interstate commerce in the State of Georgia and as well in intrastate commerce in said State.

Intervenors file this their joint and several answer to the bill of the Georgia Public Service Commission and of the Commissioners thereof, and for answer say:

1

Intervenors admit the allegations of paragraph one (1) of the bill. These intervenors allege that neither Georgia Public Service Commission nor its Commissioners have any pecuniary interest in the subject matter involved in this cause.

2

Intervenors admit the allegations of paragraph two (2) of the bill.

3

Intervenors admit that on the 5th day of October, 1925, the Interstate Commerce Commission entered an order in a proceeding then pending before it entitled "Rates on chert, clay, sand and gravel within the State of Georgia". The scope of that order will be determined by its own terms. [fol. 161] Intervenors admit that all railroads operating in Georgia, subject to the jurisdiction of the Interstate Commerce Commission, were made respondents to this said proceeding, and the Governor of Georgia and the Georgia Public Service Commission were given due notice thereof.

4

Intervenors admit the allegations of paragraph four (4) of the bill.

5

Intervenors admit the allegations of paragraph five (5) of the bill.

6

Intervenors admit that the Commission entered its report dated January 21, 1927, and also entered its formal order of the same date. Said report and order were en-

titled in No. 17517 and No. 17763. The said report and order are set out in the bill as Exhibit "A" thereto. The remaining portion of paragraph six (6) of the bill is denied. The Interstate Commission did not find that the Georgia Commission's rates were non-discriminatory as to the rates prescribed by the Interstate Commission in its aforesaid order of January 2, 1927, but on the other hand clearly intimated that they were discriminatory against said rates. The Interstate Commission then withheld its order for the correction of such discrimination out of courtesy to the Georgia Commission.

7

Intervenors admit that the Georgia Public Service Commission entered an order dated February 25, 1925, effective April 1, 1925.

8

Intervenors admit that the Georgia Public Service Commission, on the 13th of March, 1928, entered its further order in reference to the transportation of the commodities effected, a copy of which is attached to the bill marked Exhibit "B".

[fol. 162]

9

Intervenors admit that the original proceedings were reopened by order of the Interstate Commission entered on the 4th day of June, 1928. Copy of said order of reopening is set out as Exhibit "C" to the bill, and is limited as is therein specifically stated.

10

Thereafter the matter was further heard before Examiner Waters and extensive evidence was taken. Intervenors deny that any material and competent evidence, offered by the complainants in this case, was refused by the examiner, and that incompetent, irrelevant and immaterial evidence was received; and also deny that the complainants were prejudiced by any of the rulings therein referred to.

11

The Commission, after proceeding in the regular and lawful way, rendered its report and order dated December

9, 1929, copy of which is attached to the bill as Exhibit "D". The said order was made after long hearings, after the taking of voluminous evidence, after having received briefs of counsel, after having heard oral argument, and after the evidence, briefs and oral argument had been carefully and fully considered. Intervenors allege that the said order of the Commission was amply supported in every material part thereof by substantial evidence. They further allege that the evidence so legally offered and received not only justified but required the finding rendered in this cause by the Commission.

12

Intervenors allege that no allegation contained in this paragraph of said bill has any effect upon the validity of the order of the Commission which is complained of in this cause.

13

Intervenors allege that it is true that the Georgia Public Service Commission did file with the Commission a mo- [fol. 163] tion for rehearing, copy of which is attached to the bill and marked Exhibit "E". The said exhibit is referred to for a statement of its contents.

14

Intervenors admit the allegations of paragraph fourteen (14) of the bill.

15

Intervenors allege that the rates fixed by the order of the Interstate Commerce Commission, entered on the 9th day of December, 1929, set out as Exhibit "D" to the bill, will be the only rates in effect governing the transportation within its terms after the effective date thereof; that it is their purpose to apply those rates as they are required to do by law so long as those rates are the lawful rates.

16

Intervenors deny each and every allegation of fact and each and every conclusion of law contained in paragraph sixteen (16) of complainant's bill.

Intervenors allege that heretofore and on or about the 29th of January, 1930, and more than thirty days prior to March 3, 1930, intervenors, through their agent, J. H. Glenn, tendered to the Georgia Public Service Commission for filing their Supplement No. 8 to I. C. C. No. A 716, being a Supplement to Freight Tariff No. 33A and being local and joint freight and distance tariff applying on commodities between points in the State of Georgia. The purpose of said tariff was to make effective on March 3, 1930, the rates on sand, gravel (washed or unwashed), clay gravel, crushed stone and slag which had been prescribed by the Interstate Commerce Commission in its order of December 9, 1929, copy of which is set out in the bill beginning at page 129 thereof. The said rates affected by the said supplement were applicable only to intrastate traffic, i. e., traffic having [fol. 164] origin, destination and entire transportation in the State of Georgia; the said rates being those fixed by the Interstate Commerce Commission and being identical with the rates for the same transportation published in interstate tariffs and filed with the Interstate Commerce Commission.

On February 13, 1930, Mr. E. M. Price, Rate Expert for the Georgia Public Service Commission, acting in his official capacity for the said Commission, rejected the aforementioned suppelment No. 8 and returned the same with the following notation thereon, to-wit:

"This schedule is in violation of Order in Docket 16384 of Georgia Public Service Commission, entered March 1?, 1928, and is unlawful. It is, therefore, rejected and returned."

Intervenors pray that the bill of Complainants be dismissed.

Alston, Alston, Foster & Moise, Wm. H. Sibley, Attys. for Intervenors.

[fol. 165] *Duly sworn to by R. J. Doss. Jurat omitted in printing.*

[fol. 166] IN UNITED STATES DISTRICT COURT

ANSWER OF INTERVENORS—Filed Feb. 27, 1930

Come now The Alabama Great Southern Railroad Company, a corporation under the laws of the State of Alabama, Georgia Southern and Florida Railway Company, a corporation under the laws of the State of Georgia, and Southern Railway Company, a corporation under the laws of the State of Virginia, interveners in this cause, and respectfully allege that each of them is a common carrier by railroad engaged in the carriage of each and all of the commodities involved in this proceeding in intrastate commerce in the State of Georgia, as well as interstate commerce into said State.

Interveners file this their joint and several answer to the bill of the Georgia Public Service Commission and the members thereof, and for answer say:

I

Interveners admit the allegations of Paragraph I of the bill.

II

Interveners admit the allegations of Paragraph II of the bill.

III

Interveners admit that on the 5th day of October, 1925, the Interstate Commerce Commission entered an order instituting a proceeding and inquiry entitled "Rates on Chert, Clay, Sand and Gravel Within the State of Georgia." The scope of that order will be determined by its own terms. Interveners admit that all railroads operating in Georgia, subject to the jurisdiction of the Interstate Commerce Commission, were made respondents in said proceeding and that the Governor of Georgia and the Georgia Public Service Commission were given due notice thereof.

IV

Interveners admit the allegations of Paragraph IV of the bill.

[fol. 167]

V

Interveners admit the allegations of Paragraph V of the bill.

VI

Interveners admit that the Interstate Commerce Commission rendered its report dated January 21, 1927 and that it also entered its formal order on the same date. The said report and order are set out in the bill as Exhibit "A" thereto.

The other allegations contained in Paragraph VI of the bill are denied. The Interstate Commerce Commission did not find that the rates theretofore prescribed and made effective in Georgia by the Georgia Public Service Commission were nondiscriminatory as alleged in Paragraph VI of the bill, but on the other hand indicated that such rates were discriminatory and unduly prejudicial as compared with the interstate rates prescribed by the Commission in its report and order of January 21, 1927. The Interstate Commerce Commission made no order with respect to the intrastate rates in Georgia, but withheld an order in order to give the Georgia Public Service Commission an opportunity to fix and prescribe intrastate rates in the State of Georgia which would be free from undue prejudice and unjust discrimination against interstate commerce and against persons and localities shipping in interstate commerce into the State of Georgia.

VII

Answering Paragraph VII of the bill, interveners admit that the Georgia Public Service Commission entered an order dated February 25, 1925 which, under its terms, became effective on April 1, 1925.

VIII

Answering Paragraph VIII of the bill, interveners admit that the Georgia Public Service Commission entered its further order on the 13th day of March, 1928, with reference to the transportation of the commodities involved, a copy of which said order is attached to the bill as Exhibit "B".

[fol. 168]

IX

Unterveners admit that the original proceedings before the Interstate Commerce Commission were reopened by that Commission under its order dated June 4, 1928. A copy of said order is attached to the bill as Exhibit "C" and is limited as specifically stated and provided in said order.

X

Answering Paragraph X of the bill, interveners allege that the matter was further heard before Examiner Waters of the Interstate Commerce Commission on the 26, 27 and 28 of December 1928, and that extensive evidence was taken. They deny that any material and competent evidence offered by the complainants in this case was refused by the Examiner, and they also deny that incompetent, irrelevent and immaterial evidence was received; they further deny that the complainants were prejudiced in any manner whatsoever by any of the rulings therein referred to.

Answering Paragraph XI of the bill, interveners assert that the Interstate Commerce Commission, after proceeding in the regular and lawful way, rendered its report and order dated December 9, 1929, a copy of which is attached to the bill as Exhibit "D". Said order was made after extensive hearings, after the taking of voluminous testimony, after briefs were filed with that Commission by counsel, after a tentative report was issued by the Examiner and all parties afforded an opportunity to file exceptions thereto, after the Commission had heard oral argument, and after the evidence, briefs, exceptions to the Examiner's tentative report and oral argument had been considered and weighed carefully. Interveners allege that the said order of the Interstate Commerce Commission was amply supported in every part thereof by substantial evidence and that the evidence so legally offered and received not only justify but require the findings rendered in this cause by the Interstate Commerce Commission.

[fol. 169]

XII

Interveners allege that no allegation contained in this paragraph of the bill has any effect upon the validity of the order of the Interstate Commerce Commission which is complained of in this cause.

XIII

Interveners allege that it is true that the Georgia Public Service Commission filed with the Interstate Commerce Commission a motion for rehearing, a copy of which is attached to the bill and marked Exhibit "E".

XIV

Interveners admit the allegations of Paragraph XIV of the bill.

XV

Interveners allege that the rates fixed by the order of the Interstate Commerce Commission entered on the 9th day of December, 1929, set out as Exhibit "D" to the bill, will be the only rates in effect governing the transportation with its terms after the effective date thereof, to wit; March 3, 1930; that it is their purpose to apply these rates as they are required to do by law so long as the aforesaid order of the Interstate Commerce Commission of December 9, 1929 remains in full force and effect.

XVI

Interveners deny each and every allegation of fact and each and every conclusion of law contained in Paragraph XVI of complainant's bill.

XVII

Interveners allege that heretofore and on or about the 29th of January, 1930, and more than thirty days prior to March 3, 1930, interveners, through their agent, J. H. Glenn, tendered to the Georgia Public Service Commission for filing their Supplement No. 8 to I. C. C. No. A 716, being a Supplement to Freight Tariff No. 33-A and being local and joint freight and distance tariff applying on com-

[fol. 170] modities between points in the State of Georgia.

The purpose of said tariff was to make effective on March 3, 1930, the rates on sand, gravel (washed or unwashed), clay gravel, crushed stone and slag which had been prescribed by the Interstate Commerce Commission in its order of December 9, 1929, copy of which is set out in the bill beginning at page 129 thereof. The said rates affected by the said supplement were applicable only to intrastate traffic, i. e., traffic origin, destination and entire transportation in the State of Georgia; the said rates being those fixed by the Interstate Commerce Commission and being identical with the rates for the same transportation published in interstate tariffs and filed with the Interstate Commerce Commission.

On February 13, 1930, Mr. E. M. Price, Rate Expert for the Georgia Public Service Commission, acting in his official capacity for the said Commission, rejected the aforementioned supplement No. 8 and returned the same with the following notation thereon, to-wit:

"This schedule is in violation of Order in Docket 16384 of Georgia Public Service Commission, entered March 13, 1928, and is unlawful. It is, therefore, rejected and returned."

The aforesaid tariff has been filed with and received by the Interstate Commerce Commission and the rates published therein are in strict conformity with the order of the Interstate Commerce Commission entered on December 9, 1929.

Except as herein expressly admitted, interveners deny each and all of the allegations contained in the bill of complaint.

Wherefore interveners pray that the bill in this cause be dismissed.

Sanders McDaniel, W. N. McGehee, Attorneys for the Interveners, The Alabama Great Southern Railroad Company, Georgia Southern and Florida Railway Company, Southern Railway Company.

[fol. 171] *Duly sworn to by L. V. Crane. Jurat omitted in printing.*

[fol. 172] In United States District Court for the Northern District of Georgia, Atlanta Division

No. 656. In Equity

Bill of Complaint

To the Honorable the Judges of the District Court of the United States for the Northern District of Georgia, Atlanta Division:

The petition of State Highway Board of Georgia, Commissioners of Roads and Revenues of Fulton County, City of Atlanta, Brown Brothers, Georgia Gravel Company, Central of Georgia Sand Company, and C. W. Moore, complaining of the United States of America, the Interstate Commerce Commission, The Gainesville and Northwestern Railroad Company (G. A. Austin and Sidney Smith, Receivers), Atlanta, Birmingham & Coast Railroad Company, Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, Georgia Railroad, Georgia Southern and Florida Railway Company, Louisville and Nashville Railroad Company, The Nashville, Chattanooga & St. Louis Railway, Seaboard Air Line Railway Company, and Southern Railway Company, respectfully shows:

I

Petitioner State Highway Board of Georgia is an agency of the State of Georgia, with power to sue and be sued, engaged in the construction of highways within the State of Georgia for the use of said State and the people thereof; Commissioners of Roads and Revenues of Fulton County, Georgia, are: Paul S. Ethridge, Chairman, W. L. Gilbert, Walter C. Hendrix, Edward H. Inman, and Walter B. Stewart. These have authority to and are engaged in the [fol. 173] construction of roads in the County of Fulton, in the State of Georgia; City of Atlanta, a municipality duly and legally chartered under the laws of the State of Georgia, with its residence in the County of Fulton, said State, and which city constructs and improves streets therein. All the foregoing petitioners use the commodities described in the above styled petition and the rates on such commodities affect the prices thereof, and each and all of

the foregoing named petitioners are directly interested in the intrastate rates thereon in the State of Georgia.

II

Brown Brothers, of Howard, Taylor County, Georgia, a citizen and resident of the State of Georgia; Georgia Gravel Company, a citizen of Columbus, in the County of Muscogee, State of Georgia; Central of Georgia Sand Company, a citizen of the County of Taylor, in the State of Georgia, both of which are corporations duly and legally organized under the laws of the State of Georgia; and C. W. Moore, a citizen and resident of Junction City, in the County of Talbot, State of Georgia. All of the petitioners named in this paragraph are engaged in the production of sand and gravel and are directly interested in the rates within the State of Georgia that are paid thereon, such rates materially affecting the business of each of the petitioners named in this paragraph.

III

All of the petitioners hereto, named in paragraphs I and II hereof, were parties to the proceedings before the Interstate Commerce Commission, copies of which are attached hereto.

IV

Petitioners further show that the defendant railroads named hereinbefore are railroads serving petitioners in the [fol. 174] shipments of the commodities here involved and are doing business within the State of Georgia, and were parties to the proceedings here sought to be reviewed and to the order here sought to be set aside and annulled. That such railroad defendants, to-wit: on the 29th of January, 1930, issued a local, joint freight and distance tariff, being Supplement No. 8 to Freight Tariff No. 33-A, in which tariff said defendant railroads and other roads not material to the rights of petitioners herein sought to make effective on the 3rd day of March, 1930 the rates prescribed by the Interstate Commerce Commission in its order in Docket No. 17517, and unless enjoined defendants will make effective on the 3rd of March, 1930 said freight tariff affecting the rates of petitioners, increasing some and decreasing some. The said schedules if and when so estab-

lished or applied will violate the statutes of the State of Georgia and the constitution of said state governing transportation by railroad in intrastate commerce in said state.

V

This suit is brought to enjoin, set aside, annul, and suspend certain orders of the Interstate Commerce Commission and is instituted under the provisions of the Urgent Deficiency Appropriations Act, approved October 22, 1913 (38 Stat. L., 219; Chap. 32), and petitioners invoke the jurisdiction of this court under the provisions of said Act and of the so-called Commerce Court Act (36 Stat. L., 539), and of Section 207 of the Judicial Code.

Defendant, United States of America, is made such by virtue of the provisions of the aforesaid acts. The defendant, Interstate Commerce Commission, is an administrative tribunal created by Act of Congress, approved February 4, 1887 (24 Stat. L., 379), as later amended (hereinafter referred to as the Interstate Commerce Act), whose duties and powers are defined in such Act and in Acts amendatory thereof and supplemental thereto.

[fol. 175] VI

Heretofore, on, to-wit, the 5th day of October, 1925, the said Interstate Commerce Commission entered an order which instituted a proceeding of inquiry upon petition filed in that behalf by Atlantic Coast Line Railroad Company and others (the said petitioners being common carriers engaged in the transportation of property by railroad in interstate commerce and as such subject to the Interstate Commerce Act. The purpose of said proceeding of inquiry was stated in said order, namely, to determine whether the then existing carload rates on sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in carloads (either and all of said materials are for convenience referred to hereafter by the term sand and gravel, etc.), required by an order theretofore entered by Georgia Public Service Commission, under date of February 25, 1925, to be maintained by said Atlantic Coast Line Railroad Company and others for intrastate movements of said materials between points in Georgia resulted in any undue or unreasonable advantage, preference, or prejudice, as between

persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or in any undue, unreasonable, or unjust discrimination against interstate or foregin commerce; and if so, what rates or what maximum rates, or minimum rates, or maximum and minimum rates, should be prescribed to be charged to cure the situation. All railroads operating in the State of Georgia subject to the jurisdiction of the Interstate Commerce Commission were made respondents to this said proceeding, and the Governor of Georgia and the Georgia Public Service Commission were given due notice thereof. The said investigation was assigned Docket No. 17517.

VII

Thereafter, after hearing, following briefs and oral argument, the Interstate Commerce Commission entered its [fol. 176] report dated January 21, 1927, reported in Volume 122 of I. C. C. Reports, at pages 133 to 176, inclusive, and its formal order dated January 21, 1927, entitled in No. 17517 and in No. 17763, and in other proceedings consolidated therewith. The said report and order prescribe certain bases of rates, as maximum rates, to govern the interstate transportation of sand and gravel, etc., between points in the State of Georgia and points in other states in southern territory, as defined therein. The report and order contain no findings against intrastate rates maintained or charged within the State of Georgia, and state that the order of the Georgia Public Service Commission which had been entered February 25, 1925, could not be found to have brought about a rate situation which had in the past been unjustly discriminatory against interstate commerce. A copy of the aforesaid report and order of January 21, 1927 is attached hereto, marked as Exhibit A, and made a part hereof.

VIII

Theretofore, Georgia Public Service Commission, pursuant to its statutory duties, had entered its order dated February 25, 1925, and effective April 1, 1925, wherein said Commission had approved a general revision of rates on sand and gravel, etc., between points in the State of Geor-

gia, by railroad, over all of the railroads in said state, in intrastate commerce.

IX

Thereafter, following the Interstate Commerce Commission's report and order of January 21, 1927, Exhibit A hereto, Georgia Public Service Commission entered its further order dated the 13th of March, 1928, prescribing maximum rates for the intrastate transportation of sand and gravel, etc., over all of the railroads in the State of Georgia. A copy of said order is attaches hereto as Exhibit B, and made a part hereof.

[fol. 177]

X

Thereafter, the Interstate Commerce Commission entered its further order dated the 4th day of June, 1928, reopening the said proceedings for further hearing and investigation in respect of certain issues only, that is to say for the sole purpose of determining whether the rates and minimum weights required by the aforesaid order of the Georgia Public Service Commission to be maintained by aforesaid railroad companies respondents therein, on intrastate shipments within Georgia, of sand and gravel, etc., in relation to the interstate rates and minimum weights prescribed by the Interstate Commerce Commission, will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce. A copy of the said order of June 4, 1928, is attached hereto as Exhibit C, and made a part hereof.

XI

Thereupon, the matter was heard further at Atlanta before the aforesaid Examiner Waters, duly appointed and qualified as aforesaid, on, to-wit, the 26th, 27th, and 28th days of December, 1928. At said hearing further testimony was received from various parties to the hearing, including petitioners and Georgia Public Service Commission; and there was offered in evidence on the hearing referred to

testimony seeking to prove that the rates intrastate in Georgia violate sections 3 and 13 of the Act to Regulate Commerce in that they were unduly preferential to shippers in Georgia and unduly prejudicial of interstate shippers. Such evidence was objected to and is here now objected to because by the orders as shown in the allegations of the original complaint the interstate rates were not open [fol. 178] for investigation and all evidence which assumed that such interstate rates were just and reasonable was unauthorized.

XII

Thereafter, the Interstate Commerce Commission entered its supplemental report and order dated December 9, 1929, and reported in Volume 160, I. C. C. Reports, at page 309. A copy of said report and order is attached hereto as Exhibit D, and made a part hereof. The Interstate Commerce Commission therein undertakes to require the respondent railroad companies to establish on or before March 3, 1930, and thereafter to maintain and continue in force and effect indefinitely, until the further order of said Commission, and to apply to the intrastate transportation of sand and gravel, etc., between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, not exceeding the rates set forth in the appendix to the order; and the appendix sets forth distance scales of rates to be applied according to a certain formula as set forth in the report, not governed by the mileage over the actual routes over which the transportation is performed.

XIII

Following the Interstate Commerce Commission's aforesaid report and order of December 9, 1929, Exhibit D hereto, Georgia Public Service Commission filed with said Interstate Commerce Commission a petition for rehearing wherein various assignments of error were made against the Commission's aforesaid report and order of December 9, 1929, with the prayer that the same should be vacated and set aside and other relief was prayed, as set forth in said petition. A copy of the aforesaid petition is attached hereto as Exhibit E, and made a part hereof.

[fol. 179]

XIV

The aforesaid petition for rehearing by Georgia Public Service Commission, Exhibit E hereto, was denied by the Interstate Commerce Commission in order entered the 3rd day of February, 1930.

XV

Therefore, having exhausted their efforts and remedies under the Interstate Commerce Act, and with the Interstate Commerce Commission, your petitioners herein respectfully institute this proceeding for the purpose of annulling and setting aside the aforesaid reports and orders of the Interstate Commerce Commission and to enjoin the enforcement thereof in so far as such reports and orders require or may require the carrier-defendants within the State of Georgia, jointly and severally, to establish, put in force and maintain any rates whatsoever for the transportation of sand and gravel, etc., in intrastate commerce within the State of Georgia.

As grounds for said prayer, your petitioners respectfully show unto the court that the said reports and orders of the Interstate Commerce Commission are arbitrary and unreasonable, beyond the power of the Interstate Commerce Commission, and wholly invalid and unlawful in the following respects and for the following reasons, among others:

(a) Aforesaid reports and orders constitute an unlawful invasion of the sovereign rights of the State of Georgia reserved to it by the Constitution of the United States, and of the citizens of the said State of Georgia, and are without warrant or authority under the constitution of the United States.

(b) Aforesaid reports and orders constitute an unlawful exercise of power by said Interstate Commerce Commission, without warrant or authority under the Constitution of the United States or the Interstate Commerce Act, as amended.

[fol. 180] (c) Aforesaid reports and orders are arbitrary and unlawful in that in substance they purport and seek to restrain and enjoin the Georgia Public Service Commission from requiring the railroads to charge, for intrastate transportation of aforesaid materials within the State of Georgia,

rates which are the same in amount for corresponding distances of actual transportation, or on the same basis, as interstate rates which the aforesaid carriers are permitted by said Interstate Commerce commission to continue charging for interstate transportation into and out of said State of Georgia and in territory contiguous thereto.

(d) Aforesaid reports and orders are arbitrary and unlawful in that they purport to and do impose a formula to govern rates for transportation of said materials within the State of Georgia, not in harmony with a lawful order heretofore entered by the Georgia Public Service Commission prescribing maximum rates for said intrastate transportation; and said Interstate Commerce Commission has no power conferred on it by law to prescribe a rate-making formula, as such, its authority being limited to prescribing reasonable rates, as maximum rates or as minimum rates.

(e) Aforesaid reports and orders are arbitrary and unlawful in that they prescribe rates for actual services of transportation over actual routes of movement in intrastate commerce within the State of Georgia and also in interstate commerce, to be made with regard to fictitious mileages, that is to say, with regard to the distances over routes that are not used and which neither the Interstate Commerce Commission nor the Georgia Public Service Commission could require the carriers to operate as through routes for the transportation of property without infringement of the constitutional rights of said carriers and of their rights under paragraph (4) of section 15 of the In-
[fol. 181] terstate Commerce Act.

(f) The aforesaid reports and orders are erroneous in law and the Commission was without jurisdiction to enter them in so far as they purport to fix rates for the intrastate transportation aforesaid, because under the Commission's order instituting the aforesaid inquiry in No. 17517, under the allegations of the complaint in the aforesaid case No. 17763, and under the aforesaid order of June 4, 1928, reopening the said proceedings for further hearing and investigation, the issues were limited so that the Commission did not have jurisdiction to enter a valid order under the terms of section 13, or of any other section of the Interstate Commerce Act.

(g) The report and order are erroneous because there is no substantial evidence of record in the proceedings wherein they are entered warranting or requiring a finding that the rates for the transportation of the materials in question now charged, or which are made or imposed by authority of the State of Georgia, or any of said rates, for said intrastate transportation, cause any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and in fact, the aforesaid intrastate rates are not preferential, or prejudicial, or discriminatory, or burdensome.

(h) It is apparent from the opinion of the Interstate Commerce Commission in said Docket No. 17517, decided December 9, 1929, that the said Interstate Commerce Commission assumed the power to bring interstate rates and intrastate rates into harmony and assumed that a difference between interstate rates and intrastate rates was unlawful.

(i) Because said Interstate Commerce Commission in [fol. 182] said opinion and the order thereon unlawfully and arbitrarily acted on the assumption that the rates of the Georgia Public Service Commission made after the order of the Commission in its first order in Docket No. 17517 could be changed without considering or permitting evidence with relation to the original order of the Interstate Commerce Commission.

(j) Said opinion and order are erroneous in that the Interstate Commerce Commission required short line railroads against their desire and without evidence of a violation of section 3 or of section 13, to increase their rates above the standard rates from an arbitrary of ten cents to an arbitrary of twenty-five cents per ton.

(k) Because said opinion and order of the Interstate Commerce Commisison creates an unjust prejudice against intrastate shippers in Georgia and an undue preference in favor of interstate shippers shipping into Georgia, in that in the rates prescribed for interstate shipments a maximum rate is prescribed and the interstate carriers are per-

mitted to make groups and the long lines are permitted to meet the rates of the short lines while intrastate in Georgia shipping points four miles apart are not permitted to be grouped and the longer lines are not permitted to meet the rates of the short lines.

(l) Because said opinion and order are unlawful, arbitrary and without jurisdiction in that the interstate rates and the intrastate rates are fixed upon different bases and are not comparable, the intrastate rates being the same whether the shipment is over one or more lines, and the interstate rates being higher when the shipment is over more than one line.

(m) Because under the opinion and order of the Interstate Commission of December 9, 1929 it is permitted for an interstate shipment shipping over a joint line or over a single line to meet lower rates of its competitor with a [fol. 183] shorter distance, and thus to make rates for any particular mileage that are lower than for similar mileages within the Sttae.

(n) That the defendant railroads, as will be shown in their Supplement No. 8 to Freight Tariff No. 33-A, which will be exhibited to the court, in complying with the opinion and order of the Interstate Commerce Commission have reduced many rates in the State of Georgia; that such reduction was not authorized by the Public Service Commission of Georgia and is in violation of the law of the State of Georgia and of the rules and regulations of the state commission and the order of the Interstate Commerce Commission claimed as a justification for such tariff is not authority therefor.

(o) Because said order of the Interstate Commerce Commission here sought to be annulled violates paragraph 3 of section 8 of Article I of the Constitution of the United States in that it is a regulation of commerce which is not among the several states, nor with the Indian tribes, nor with foreign nations, and said order is further in violation, and for the same reason, of sub-divisions a and b of paragraph 2 of section 1 of the Interstate Commerce Act.

XVI

That if the defendant carriers be permitted to collect the increased rates here complained of and contained in the

supplemental tariff hereinbefore referred to and claimed to be authorized by the order of the Interstate Commerce Commission, petitioners will be irreparably damaged; they will have to pay such higher rates and even if they should recover them in the future there would be a multiplicity of suits and expense and under the facts petitioners are entitled in order to prevent their suffering irreparably, to a temporary stay or suspension of the application of said order and of the collection of said rates, and are entitled to an interlocutory injunction to continue until a final hearing hereof.

[fol. 184] Wherefore petitioners respectfully pray:

(1) That notice may be given by mail to the Interstate Commerce Commission and to the Attorney General of the United States and that subpœna issue to the railroads named defendants herein, as required by law.

(2) That on the filing of this petition, and after a hearing had on three days' notice to defendants, this court, under its order temporarily staying or suspending the enforcement, operation, and execution of the order entered by the Interstate Commerce Commission in the proceeding known as "Docket No. 17517, Rates on Chert, Clay, Sand and Gravel within the State of Georgia", in so far as such orders affect intrastate rates within the State of Georgia.

(3) That an interlocutory injunction issue suspending and restraining the enforcement, operation, and execution of said order of the Interstate Commerce Commission in so far as such order effects rates for transportation wholly within the State of Georgia.

(4) For an order enjoining defendant carriers until final hearing from collecting the rates prescribed in the tariffs affecting rates on transportation wholly within said State claimed to be filed in conformity with the order of the Interstate Commerce Commission of December 9, 1929, and from collecting other or different rates than those prescribed for intrastate application by the Georgia Public Service Commission in the State of Georgia.

(5) That after further hearing in accordance with law, said court suspend, set aside, and annul the order and find-

ings of December 9, 1929, and any and all other orders or findings, authorizing, permitting or requiring interference with the intrastate rates of Georgia on the commodities of chert, clay, sand and gravel.

(6) That a permanent injunction be granted against the carrier defendants, enjoining them as prayed in paragraph (4) of this prayer.

[fols. 185-207] (7) That the court make such other and further order or orders as is meet and proper in the premises.

(8) That notice hereof be served upon the United States by leaving a copy of this petition and the order thereon with the Attorney General and the Interstate Commerce Commission; that a temporary restraining order, an interlocutory injunction, and a permanent injunction be granted conformable to the prayers of this petition, and that a writ of subpœna of the United States of America, directed to the carrier defendants hereinbefore named, commanding them on a date certain to appear and answer this bill of complaint and to abide and perform such order and decree in the premises as the court shall deem proper and required by the principles of equity and good conscience.

(9) That petitioners be allowed to proceed as plaintiffs herein and be granted such other and further relief in the premises as may be meet and proper.

All of which petitioners respectfully pray.

Edgar Watkins, Mac Asbill, and Edgar Watkins, Jr., Solicitors and of Counsel for Petitioners.

Duly sworn to by Harry T. Moore. Jurat omitted in printing.

[fol. 208] IN UNITED STATES DISTRICT COURT

In Equity. No. 565

[Title omitted]

ORDER OF CONSOLIDATION—Filed Mar. 1, 1930

It appearing that the plaintiffs and defendants in this bill are all parties to Bill In Equity No. 563, Georgia Public

Service Commission, et al. vs. United States of America, et al. and that the subject matter of litigation is the same in each bill, upon motion to that effect, and no objection being made, it is ordered that this case be consolidated into the case of the Georgia Public Service Commission, et al., vs. United States of America, et al., In Equity No. 563, and that the litigation proceed as one case under the title of the last-named bill.

Feb. 28th, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Sam'l. H. Sibley, United States District Judge.

[fol. 209] IN UNITED STATES DISTRICT COURT

ORDER SETTING CAUSES—Filed May 12, 1930

Upon motion of counsel for petitioners, the above styled causes are set for final hearing before Judges Nathan P. Bryan, Wayne G. Borah, and Samuel H. Sibley at Jacksonville in the United States Courtroom, at ten a. m., June 23, 1930. Plaintiffs' counsel will give notice to opposing counsel of this setting.

This 12 day of May, 1930.

Sam'l H. Sibley, U. S. Judge.

[fol. 210] IN UNITED STATES DISTRICT COURT

PETITION FOR INTERVENTION AND ORDER THEREON

Now comes the Roquemore Gravel Company, Alabama Sand and Gravel Company, and Dixie Sand and Gravel Company, and respectfully represent that they have an interest in the matters in controversy in the above mentioned proceedings, and desire to intervene and become parties defendant to such proceedings, and for grounds of the proposed intervention say:

1

Your petitioners, each and all, were complainants before the Interstate Commerce Commission in I. C. C. Docket

Number 17763; that the proceedings thereunder were consolidated with I. C. C. Docket Number 17517, for the purpose of investigation and hearing before said Interstate Commerce Commission.

2

That the order of the Interstate Commerce Commission that the Complainants herein now seek to enjoin and set aside in the proceedings at bar, is the order which said Interstate Commerce Commission issued in the consolidated proceedings, I. C. C. Docket Number 17517 and 17763, hereinbefore described.

3

That your petitioners are interested in the subject matter of this litigation and that their admission as parties defendant is reasonably necessary to the protection of their respective intetests.

Wherefore said petitioners pray the Court to make and cause to be entered herein an order permitting said petitioners to file petition of intervention in the above entitled cause.

C. E. Cotterill, Joseph J. Hopkins, Attorneys for Petitioners.

[fol. 211] Order

The foregoing petition for intervention of The Roquemore Gravel Company, Alabama Sand and Gravel Company and Dixie Sand and Gravel Company, having been presented, read and considered, same is hereby sanctioned and ordered filed.

It is further ordered that The Roquemore Gravel Company, Alabama Sand and Gravel Company and Dixie Sand and Gravel Company be and hereby are each and all made parties defendant in the above entitled proceedings.

Dated this the 24th day of June, 1930.

N. P. Bryan, Wayne G. Borah, Sam'l H. Sibley.

[fol. 212] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. Nos. 563 and 565

GEORGIA PUBLIC SERVICE COMMISSION et al., Petitioners,

versus

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants

OPINION—Filed Mar. 3, 1930

Bill No. 563 was brought by the Public Service Commission of Georgia under 28 U. S. Code, Sec. 41 (28), and Secs. 46 and 47, to enjoin and set aside the order of the Interstate Commerce Commission, dated Dec. 9, 1929, on its docket No. 17517, whereby State rates in Georgia on stone, slag, sand, gravel, etc., were prescribed to conform to the interstate rates thereon. Bill No. 565, brought by other interested parties for the same purpose, has been consolidated into No. 563. On the hearing for an interlocutory injunction, the evidence before the Interstate Commerce Commission in making the order was not introduced here, so that no question depending on that evidence can be considered, but only such questions as arise upon the face of the order and of the findings of fact preliminary to it. The proceedings of the Interstate Commerce Commission which began in 1925 are reported in 122 I. C. C. 133, and 160 I. C. C. 309, and will be barely summarized here. Reasonable interstate rates on stone, slag, sand, gravel, etc., for what may be referred to as the Georgia territory were investigated, and also the question of discrimination by the then intrastate rates under the procedure authorized by Sec. 13 (4) of the Interstate Commerce Act as amended. After a hearing which was indubitably full, on Jan. 21, 1927, a scale of maximum rates based on distance was established as reasonable in interstate commerce. The finding as to [fol. 213] discrimination by the Georgia intrastate rates was thus stated (122 I. C. C. 169):

"Considering the results brought about by this order, (that establishing the then Georgia rates), it could not be

found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings, approving a distance scale of rates for application alike to the interstate transportation of all the commodities here considered. There is, of course, no transportation reason for the maintenance of a different basis of intrastate rates on these commodities than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia Commission in the past, which we have adverted to, we do not now deem it necessary to make any finding or utter any order in No. 17517 for the future insofar as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia Commission will cooperate in authorizing such revision as may be necessary to bring their rates into harmony with the interstate adjustment herein approved."

The Georgia Commission did revise its rates March 13, 1928, adopting a maximum scale based on distance in the main upon the plan of the interstate scale. Its authorized charges on single line hauls for distances under 200 miles agree with the interstate scale in ten items, but are lower in seven, and for distances over 200 miles agree in three items, but are higher in nine. On joint line hauls the differences are greater, and in all cases the Georgia scale is lower. A difference of view as to weak lines of railroad, and some other matters, also appears. Thereupon, on complaint, the Interstate Commerce Commission reopened its docket No. 17517 for the purpose of reconsidering the question of discrimination by the altered State rates against interstate commerce, but refused to go again into the question of the reasonableness of the two opposing scales. On Dec. 9, 1929, on full findings of the existence of discrimination against interstate commerce, the order here complained of was en- [fol. 214] tered, the general effect of which is to prescribe the interstate scale for use in intrastate transportation. The only contentions of complaint arising upon the face of this record which seems to us to be debatable are:

1. That a full hearing was denied in that, since the new Georgia rates were prescribed, the matter was reopened only as to discrimination by them against interstate com-

merce, excluding the question of their intrinsic reasonableness.

2. That the order did not stop with prescribing a maximum for interstate rates, but took over from State authority the general function of intrastate rate making on these commodities for the future.

3. That the minimum sought to be prescribed is indefinite and uncertain.

4. That as to rates above 200 miles the interstate rates are arbitrary and unreasonable, and themselves discriminate against the shorter hauls and other commerce.

1. The delegation to the Interstate Commerce Commission of power to prescribe an intrastate rate is found in Sec. 13, subsection (4), of the amended Commerce Act. The power reaches to the general revision of generally discriminatory State scales. Wisconsin R. R. Commission v. C. B. & Q. R. R., 257 U. S. 563, and to dealing with particular rates, commodities and practices, Florida v. United States, 30 Fed. (2d) 116. But in every exercise of this interference with State functions the procedure required by subsection (4) must be followed. The first named requisite of the hearing required is that there be a "full hearing." If discrimination in State rates be found substantial enough to require removal, the question must then always arise whether the State rate or the interstate rate is unreasonable and should be altered. A previous establishment of the interstate rate as reasonable will not settle the question, because the representatives of the State are entitled to a full hearing on this question of relative reasonableness. We think, however, that such a hearing was here afforded. A full hearing was undoubtedly given prior to the order of Jan. 21, 1927. The identical State rates were not then in existence, but all the questions they raise were in existence and were investigated. New interstate rates were in that very proceeding established as reasonable, and the opinion [fol. 215] expressed that as no transportation differences existed, the State rates ought to conform in order to escape future discrimination, but no positive order of conformity was then issued, in order that the State Commission might work the State rates out for itself. This left the proceeding in a manner uncompleted, and certainly proper to be

reopened after the State rates were made. Ordinarily, nothing would be then left for examination except whether the new State rates did so conform to the new interstate rates as to escape discrimination. It was found that they did not, and conformity was ordered on a review of the whole record. While the hearing, which is to be considered a single one, lasted for years, we cannot say the evidence taken in any part of it had become stale. If the Georgia Commission had any definite proof of altered conditions, it should have been concretely offered. We discover no abuse of procedure in reaching the order of Dec. 9, 1929, in the evidence now before us.

2. The second question depends upon the language of the order. Section 13 (4) provides that the Interstate Commerce Commission, on finding discrimination by State rates, "shall prescribe the rate, fare or charge, or the maximum or minimum, or maximum and minimum thereafter to be charged." The language is mandatory. One of four things must be done: First, make a fixed rate; Second, make a maximum; Third, make a minimum; Fourth, fix both a maximum and a minimum. The order of Dec. 9, 1929, undertakes the last. It requires the establishment of intrastate rates "which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities . . . not exceeding the rates set forth in the appendix to this report, and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities." Elsewhere the order uses, the expression "contemporaneously maintained by" the railroads. The maximum thus prescribed is the maximum scale definitely set forth in the appendix, and the same as the maximum in interstate commerce. No question is raised as to its validity. The minimum is the rate "contemporaneously applicable" or "contemporaneously maintained" by a particular carrier in interstate commerce for the same distances. [fol. 216] Whether the minimum is lawfully prescribed we all think depends on whether the order means by "contemporaneously" the rates now applicable and now maintained by the railroads, which we think would be a certain and lawfully fixed minimum, or whether it means the rates that may at any time in the future be applicable or maintained by the railroads in interstate commerce. In the lat-

ter meaning we think the order would be unlawful because should in the future any of the interstate rates be altered, either by the railroads or by the Commission itself on the usual proceedings only, a change in the existing State rates would ipso facto result. Thus for all time in the future until this order should be revoked, the Interstate Commerce Commission would have absorbed to itself the complete control of intrastate rates on these commodities, altering them by altering the interstate rates without the hearing as to then conditions which is required by Sec. 13 (4). If this could be done as to these rates, it could be done for all rates, and if for all rates in Georgia, for all rates in all the States. The complete control of intrastate rates could be reached by one general hearing in which it was determined that all State rates which differed from interstate rates were discriminatory and to be conformed to contemporaneous interstate rates, with future changes only such as the carriers or the Interstate Commerce Commission might make. This would have much in the way of simplicity and uniformity to commend it, but as the Constitution, which gives the Federal Government the right to regulate interstate commerce, has reserved the general control of intrastate commerce to the States, we think this result could be achieved only by altering the Constitution. Certainly the powers of the Commission under Sec. 13 (4) were not intended to be so stretched. The section contemplates investigation of particular situations under conditions then existing, with a full, formal hearing, and authorizes interference with State rates only when there is disclosed a present, real and substantial discrimination against, or other specified detriment to, interstate commerce. Florida v. The United States, 30 Fed. (2d) 117. An order like the present one applying to but one rate would be as vicious in [fol. 217] principle, and unlawful for the same reasons, as the most extreme one that has been supposed would be. A majority of this Court are of the opinion that the present order means only to establish as the minimum the interstate rates actually in force at its date. The writer thinks it means to operate automatically in the future whenever interstate rates may be altered, and, that thus intended, it is unlawful. On the ground, however, that it might mean either thing, and should, if possible, be so construed as to be lawful, I acquiesce in sustaining it. State of Florida

v. United States, 30 Fed. (2d) 117, P 3. Even so, it appears that some of the railroads, at the date of the order, had special rates allowed for reasons of competition on some of their hauls which are out of line with their general mileage scale. The question is raised as to which rate shall be the minimum for the particular distance, seeing that the railroad has two established rates for it. Probably, as minimums are involved, the lowest established rate should be followed, but the record does not show what the exact situation is, so that it could really be adjudicated. Nor do we think an exceptional situation such as is suggested would render uncertain and invalid the entire order. It should rather be amended by a supplemental order covering the particular overlooked instances. See Wisconsin R. R. Commission v. C. B. & Q. R. R., 257 U. S. 570.

4. The last question is whether the interstate scale of maximums is not arbitrary and unreasonable and discriminatory against intrastate commerce in that the hauls above 200 miles are too low to be compensatory, and thus throw an undue burden on other commerce, so that the higher State rates on such hauls should not have been displaced. It is found that the intrastate commerce is mostly on the hauls under 200 miles. If the longer hauls are non-compensatory, they tend to favor interstate commerce at the expense especially of intrastate commerce. Dealers outside of Georgia would not be entitled to an unfairly low rate because they could not otherwise compete in Georgia markets. Geographical position must limit the range of business in such articles as stone, sand, gravel and the like. [fol. 218] The Georgia Commission thinks the interstate rates for hauls above 200 miles are thus improper. Interstate Commerce Commissioners Aitchison and Woodlock think the same. 122 I. C. C. 173. But the majority of the Interstate Commerce Commissioners have determined otherwise, and since the evidence is not before us, we are bound to regard the conclusion of the majority as correct.

On the whole case we find no sufficient cause to hold the attacked order to be unlawful, and refuse an interlocutory injunction.

Sam'l H. Sibley, Dist. Judge.

[fol. 219] IN UNITED STATES DISTRICT COURT

In Equity. Nos. 563 and 565

GEORGIA PUBLIC SERVICE COMMISSION et al., Petitioners,

versus

UNITED STATES OF AMERICA et al., Defendants

Consolidated Cause

ORDER DENYING INTERLOCUTORY INJUNCTION—Filed Mar. 1, 1930

This cause came on for hearing for an interlocutory injunction before a Court composed of Honorable Nathan P. Bryan, Circuit Judge, Honorable Wayne G. Borah, District Judge and Honorable Samuel H. Sibley, District Judge, pursuant to statute in such case provided.

After hearing the evidence submitted, and argument, for reasons to be set forth in an opinion hereafter filed it is considered, ordered and adjudged that the interlocutory injunction prayed for be, and the same is hereby, denied.

February 28th, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Sam'l H. Sibley, United States District Judge.

[File endorsement omitted.]

[fol. 220] IN UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

In Equity. Nos. 563 and 565

GEORGIA PUBLIC SERVICE COMMISSION et al.

vs.

THE UNITED STATES OF AMERICA et al.

Before Bryan, Circuit Judge; Sibley and Borah, District Judges

OPINION—Filed July 5, 1930

SIBLEY, District Judge:

Our opinion in this case refusing a preliminary injunction is reported 39 F.(2) 169. A hearing for final decree

has now been had with the record of the proceedings before the Interstate Commerce Commission in evidence. The evidence leads us to no different conclusion. We adhere to what was said in the previous opinion. In it two matters were indicated in whose consideration the evidence might be helpful. The one respecting the lowness of the level of the rates for distances over two hundred miles as compared with those under two hundred miles has not been further argued in briefs or orally, and we treat the contention as abandoned. The other is involved in the question which was most discussed, to-wit: Whether the Commission prescribed a certain and lawful minimum for intrastate rates in fixing as such the interstate rates actually maintained by the carriers on December 9th, 1929, the date of the order here attacked, 160 I. C. C. 309. When the Commission, after the hearing required by Sect. 13(4) of the Commerce Act, undertakes to prescribe a rate, or a maximum or a minimum for intrastate commerce, its order must be certain and capable of practical application. American Express Co. vs. Caldwell, 244 U. S. 617; Ill. Cent. R. R. Co. vs. State Commission, 245 U. S. 493. As previously held, [fol. 221] a maximum and minimum were undertaken to be fixed by the order of December 9th, 1929. The maximum, identical with that previously fixed for interstate commerce in 122 I. C. C. 133, is a scale based on distances, higher for joint-line than for single-line hauls, and is accepted as sufficiently certain and practical. Under it the carriers had on December 9th, 1929, established a system of rates between points in Georgia and points in other states which were prescribed as the intrastate minimum. These rates are embraced in several tariffs filed with the Commission and in evidence. They consist of hundreds of point-to-point rates between named places in Georgia and in other states. Then for all points not thus specially named the scale fixed by the Commission as the maximum is established at the rate. It is asserted, and we assume it to be true, that the vast majority of these point-to-point rates are mere applications of the scale, joint- or single-line as the case might be, to the distances involved. So far, therefore, the actual rates are nothing but the maximum scale. Where, however, there are several routes between two points, the Commission, in its order establishing the interstate scale, had directed that all routes not circuitous be-

yond a fixed per cent might take the same rate and the lowest over any route, joint- or single-line, by which carload freight might move without transfer of lading. When a circuitous route thus took a rate less than called for by its mileage, the Commission also provided for maintenance of the scale rates to intermediate points which were non-competitive, notwithstanding the long and short haul provision of Section 4 of the Act. Many of the point-to-point rates to competitive and intermediate points as filed were made under these provisions. It is these departures from the maximum scale which are claimed to make the actual rates uncertain and contradictory as a minimum for intrastate rates, especially in view of the difference for single and joint-line hauls. This contention was strongly urged before the Commission and is dealt with by its report in [fol. 222] 160 I. C. C. at pages 323 and 324. The Commission there states that the departures from the maximum scale are all to be thus accounted for, or are errors to be corrected and, as we understand the Commission, they express an expectation that similar modifications will be made in intrastate rates under the like circumstances. Otherwise the interstate scale would simply have been made the intrastate rate. The evident purpose of the Commission was to equalize rates in interstate and intrastate commerce, distance considered, under similar circumstances and conditions. Because of the close competition and the large figure which the rate cuts in the price of the commodity here involved, slight additions in the rate are found to affect vitally the business done. Hence the necessity, from the standpoint of shippers, of substantial equality between the rates under similar circumstances, to prevent discrimination between intrastate and interstate commerce. We see nothing to hinder the Georgia State Commission from causing the establishment of intrastate rates which will follow the same principles that were applied in fixing interstate rates where competition justifies departure from the maximum scale. Had the Commission prescribed a fixed intrastate scale, the State Commission, or the carriers, would have been bound to establish it forthwith. When instead a maximum and minimum are fixed, as is allowed by Section 13(4), the fixing of the exact rates within these limits is to be done by the State Commission on its usual procedure. If the result in any instance is thought

contrary to the order of the Interstate Commerce Commission, the latter may be applied to for further or clarifying order in the premises.

Evidence is offered, and objected to, that the carriers are seeking to establish as the scale for intrastate rates the bare maximum scale fixed for interstate rates. Our sole jurisdiction at present is to enjoin or set aside the order of the Interstate Commerce Commission, if unlawful. We cannot fix, or aid in fixing, the intrastate rates. It seems to us, however, plain that the carriers would not be entitled to set up the maximum scale without application of the [fol. 223] modifications above discussed with reference to competitive points. This would not secure the equality of rates under similar circumstances aimed at by the Commission, but would produce discrimination in favor of interstate against intrastate commerce, which the Commission would have no power to cause. The Commission refused to establish the scale as the intrastate rate, but only made it the maximum, thus indicating that departures were allowed to conform with the actual interstate rates which were named as minimums. The State Commission has the remedy in its own hands to require the establishment of rates which will really conform to the rates maintained in interstate commerce by applying the above discussed principles in reference to competitive and intermediate points.

Strong objection is raised to the complication of having a different scale for joint- and single-line hauls of crushed stone, sand, etc., especially since the differential has been abolished in most other rates. Southern Class Rates, 100 I. C. C. at pages 627 and 628; Southern Fertilizer Rates, 113 I. C. C. 389, 425. As we said in Alabama vs. United States, just decided, there are sound reasons for saying that there is extra cost in handling a car over a joint line, and this extra cost is most important to the carriers in their lowest rates. Whether compensation for the extra cost shall be had in a separate joint scale of rates or in a slightly higher average of rates is within the competency of the Commission to decide.

Some uncertainty of necessity exists whenever a maximum and minimum is prescribed for intrastate rates by the Commission instead of direct prescription of the rates, but the uncertainty leaves liberty of action to that extent to the State Commission. We think the order here at-

tacked, in spite of its alleged uncertainties and complications, can be practically applied so as to obtain a substantial parity of interstate and intrastate rates by it, and that it should not be set aside. A decree has accordingly been entered dismissing the bill.

This July 5th, 1930.

[fol. 224] In United States District Court

Order of Dismissal on Final Hearing—Filed June 25, 1930

This cause came on for final hearing before the undersigned, and was argued by counsel.

Upon consideration of the pleadings and evidence, it is ordered, for reasons to be stated in an opinion hereafter to be filed, that the relief prayed for be denied, and that the bill of complaint be dismissed.

June 24th, 1930.

N. P. Bryan, United States Circuit Judge. Wayne K. Borah, United States District Judge. Sam'l H. Sibley, United States District Judge.

[fol. 225] In United States District Court

[Title omitted]

In Equity. No. 563. In Equity. No. 565

Petition for Appeal—Filed Aug. 23, 1930

Georgia Public Service Commission and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners thereof, complainants, feeling themselves aggrieved by the final order or decree of the United States District Court for the Northern District of Georgia, dated, June 24th, 1930, which denied the relief sought and dismissed the bill, pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed

herewith. They pray that their appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent [fol. 226] to the Supreme Court of the United States.

S. J. Smith, Jr., S. J. Smith, Luther M. Walter, Luther M. Walter, Nuel D. Belnap, Nuel D. Belnap, John S. Burchmore, John S. Burchmore, Solicitors for Georgia Public Service Commission et al., Petitioners in No. 563.

August 14th, 1930.

And State Highway Board of Georgia, Commissioners of Roads and Revenues of Fulton County, City of Atlanta, Brown Brothers, Georgia Gravel Company, Central of Georgia Sand Company, and C. W. Moore, Complainants, likewise feeling themselves aggrieved by the said final order or decree of the United States District Court for the Northern District of Georgia, dated, June 24th, 1930, which denied the relief sought and dismissed the bill, likewise pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. They pray that their appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States.

Edgar Watkins, Edgar Watkins, Mac Asbill, Mac Asbill, and Edgar Watkins, Jr., Edgar Watkins, Jr., Solicitors for State Highway Board of Georgia et al., Petitioners in No. 565.

[fol. 227] IN UNITED STATES DISTRICT COURT

[Titles omitted]

In Equity. No. 563. In Equity. No. 565

ASSIGNMENT OF ERRORS—Filed Aug. 23, 1930

Now come the Georgia Public Service Commission and James A. Perry, Albert J. Woodruff, Walter R. McDonald,

Calvin W. Parker, and Perry T. Knight, as Commissioners thereof, and State Highway Board of Georgia, Commissioners of Roads and Revenues of Fulton County, City of Atlanta, Brown Brothers, Georgia Gravel Company, Central of Georgia Sand Company, and C. W. Moore, the plaintiffs in the above entitled cause, and jointly file the following assignment of errors upon which they will rely upon their prosecution of their appeal in the above entitled cause from the order and decree made by a court of three judges in this honorable Court on the 24th day of June, 1930, and show that the Court erred in the following particulars, to-wit:

1. In not concluding and decreeing that the reports and orders of the Interstate Commerce Commission sought to the enjoined herein constitute an unlawful invasion of the sovereign rights of the State of Georgia and the rights of the citizens of Georgia reserved to them by the Tenth [fol. 228] Amendment to the Constitution of the United States, and are without warrant or authority under Article 1, Sec. 8, par. 3 of the Constitution of the United States.

2. In not concluding and decreeing that the reports and orders of the Interstate Commerce Commission sought to be enjoined herein constitute an unlawful exercise of power by said Commission, without warrant or authority under Article 1, Sec. 8, par. 3 of the Constitution of the United States or Section 1, par. 2, sub. par. (a) of the Interstate Commerce Act, as amended.

3. In not concluding and decreeing that there was no adequate finding by and no substantial evidence before the Interstate Commerce Commission authorizing or justifying that Commission in regulating and prescribing intrastate rates on sand, gravel, clay gravel, crushed stone, and slag within the State of Georgia and in not enjoining and annulling the orders of such Commission sought to be enjoined and annulled in this cause.

4. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that said orders are arbitrary and unlawful in that in substance they restrain the Georgia Public Service Commission, as the regulatory body administering the statutes of the State of Georgia, from requiring the rail-

roads to charge, for intrastate transportation within the State of Georgia, rates which are the same in amount for corresponding distances of actual transportation, as interstate rates which the aforesaid carriers are permitted by said Interstate Commerce Commission to continue charging for interstate transportation into and out of said State of Georgia, not in harmony with a lawful order heretofore

5. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, because aforesaid orders are arbitrary and unlawful in that they purport to and do impose a formula to govern rates for transportation of said materials within the State of Georgia, not in harmony with a lawful order heretofore entered by the Georgia Public Service Commission prescribing maximum rates for said intrastate transportation; and said Interstate Commerce Commission has no power [fol. 229] conferred on it by law to prescribe a rate-making formula, as such, its authority being limited to prescribing reasonable and non-prejudicial rates, as maximum rates or as minimum rates.

6. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that said orders are erroneous and invalid because they purport to rest on the principle that the rates ought to be higher for so-called joint line movements, over the lines of two or more carriers, than for corresponding distances over the individual line of a single carrier, and there was no evidence before the said Commission tending to establish or support such principle or to show that transportation over joint lines is necessarily more expensive than over single line routes.

7. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that aforesaid reports and orders are arbitrary and unlawful in that they prescribe maximum and minimum rates for actual services of transportation over actual routes of movement in intrastate commerce within the State of Georgia and also maximum rates in interstate commerce, to be made, however with regard to fictitious mileages, that is to say, with regard to the distances over supposed routes that are not used and which neither the In-

terstate Commerce Commission nor the Georgia Public Service Commission could require the carriers to operate as through routes for the transportation of property without infringement of the constitutional rights of said carriers under the Fifth Amendment and of their rights under paragraph (4) of Section 15 of the Interstate Commerce Act.

8. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that said orders are arbitrary and unlawful in that minimum rates are therein prescribed to govern intrastate transportation within the State of Georgia and only maximum rates have been fixed as reasonable for interstate transportation into and out of said state and in contiguous territory and the evidence before the Court shows that carriers are commonly charging less than the full measure of said maximum rates for interstate transportation.

9. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined [fol. 230] herein, because the aforesaid orders are erroneous in law and the said Commission was without jurisdiction to enter them, insofar as they purport to fix rates for intrastate transportation in Georgia, because the issues were limited under the Commission's order instituting the inquiry in No. 17517, under the allegations of the complaint in the case No. 17763, and under the order of June 4, 1928, reopening the said proceedings for further hearing and investigation, so that the Commission did not receive evidence concerning the reasonableness of the rates and did not establish its jurisdiction to enter a valid order under the terms of Section 13, or of any other section, of the Interstate Commerce Act.

10. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that aforesaid reports and orders are erroneous and invalid because the record of evidence on which they were entered does not show the transportation conditions, or the circumstances and conditions under which aforesaid materials actually are transported for the respective intrastate movements within the State of Georgia

and interstate movements into and out of said state, and therefore the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates, on the one hand, and under the interstate rates, on the other hand.

11. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that they are erroneous because there is no substantial evidence of record in the proceedings wherein they are entered warranting or requiring a finding that the rates for the transportation of the materials in question now charged, or which are made or imposed by authority of the State of Georgia, or any of said rates, for said intrastate transportation, cause any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce; and in fact, the aforesaid intrastate rates are not preferen- [fol. 231] tial, or prejudicial, or discriminatory, or burdensome.

12. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that the said reports and orders are arbitrary and unlawful, in that the said Commission has therein authorized violations of the long-and-short-haul principle with respect to interstate rates, by granting permission to circuitous rail lines or routes, because of such circuity, to meet the charges of more direct lines or routes to and from competitive points and to maintain higher charges to and from intermediate points as to which the haul of the said longer lines were not longer than that of the direct line or route between the aforesaid competitive points, in violation of par. (1) of Section 4 of the Interstate Commerce Act, and the rates fixed by said Commission as minimum for intrastate transportation in Georgia create violations of the same principle.

13. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that the aforesaid reports and orders are erroneous and invalid, because the said Commission therein undertakes to require reductions in intrastate rates within the State of Georgia, which are wholly beyond the jurisdiction of said Commission to reduce under Section 1. of the Interstate Commerce Act, par. 2, sub. par. (a); and because the rates therein required tend to create and will create unjust discriminations and undue preferences as among different and competing shippers and producers of said materials in Georgia, in violation of the statutes of said state governing such intrastate transportation.

14. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, because there was no substantial evidence before the Interstate Commerce Commission that the rates on sand, gravel, clay gravel, crushed stone, and slag within the State of Georgia violated section 3 or 13 of the Acts to Regulate Commerce when such rates are compared with the scale of rates fixed by the Interstate Commerce Commission in its opinion of January 21, 1927.

15. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined [fol. 232] herein for the reason that such rates are general and applicable throughout the State when there is no evidence of any violation of the Interstate Commerce Act by the larger number of intrastate rates in Georgia.

16. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that said orders are erroneous in that the Interstate Commerce Commission required short line railroads, against their desire and without evidence of a violation of section 3 or of section 13 of the Acts to Regulate Commerce, to increase their intrastate rates above the standard rates from an arbitrary of 10 cents to an arbitrary of 25 cents per ton.

17. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that said orders of the Interstate

Commerce Commission created an unjust prejudice against intrastate shippers in Georgia and an undue preference in favor of interstate shippers shipping into Georgia, in that in the rates prescribed for interstate shipments a maximum rate is prescribed and the interstate carriers are permitted to make groups and the long lines are permitted to meet the rates of the short lines, while intrastate — in Georgia from shipping points only short distances apart are not permitted to be grouped and the longer lines are not permitted to meet the rates of the short lines.

18. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that such orders condemned intrastate rates in Georgia ordered into effect by the Georgia Public Service Commission in March, 1928 in comparison with rates fixed by the Interstate Commerce Commission in a report dated January 21, 1927 when as to such rates so fixed in 1927 there had never been any hearing concerning their relationship to the rates intrastate in Georgia prescribed in March, 1928 by the Georgia Commission.

[fol. 233] 19. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein because the orders of such Commission making effective the rates found reasonable in its opinion of December 9, 1929 intrastate in Georgia were in violation of the fifth amendment to the Constitution of the United States and of the Acts of Congress in that plaintiffs were deprived of due process of law and of a full hearing.

20. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein for the reason that said Commission in its opinion and the orders thereon, herein sought to be enjoined, unlawfully and arbitrarily acted on the assumption that the rates of the Georgia Public Service Commission, ordered into effect in 1928 and after the order of the Interstate Commerce Commission of January 21, 1927, could be changed without considering or permitting evidence with relation to the order of the Interstate Commerce Commission entered in January, 1927.

21. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein

for the reason that said order of the Interstate Commerce Commission of December 9, 1929 permits an interstate shipment moving over a joint line or over a single line to meet lower rates of its competitor with a shorter distance and thus to make rates for any particular mileage that are lower than for similar mileages within the State.

Wherefore petitioners pray that said order and decree of June 24, 1930 be set aside and that they be granted relief as prayed in their original petitions.

S. J. Smith, Jr., John S. Burchmore, Solicitors for Complainants in No. 563. Edgar Watkins, Mac Asbill, Solicitors for Complainants in No. 565.

[fols. 234-236] IN UNITED STATES DISTRICT COURT

[Titles omitted]

In Equity. No. 563. In Equity. No. 565

ORDER GRANTING APPEAL—Filed Aug. 23, 1930

The complainants having filed their petition for appeal herein, the same is hereby granted and the complainants are hereby allowed to appeal said consolidated causes and

It is ordered that said appeal be and the same is hereby granted to the Supreme Court of the United States upon the filing of bonds by said complainants in the sum of 1,000.00 Dollars, with good and sufficient surety to be approved by this Court, conditioned upon the said complainants prosecuting their appeal to effect, and answering all costs if they fail to make their plea good.

This 14th day of August, A. D. 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Sam'l H. Sibley, United States District Judge.

[fol. 237] IN UNITED STATES DISTRICT COURT

[Titles omitted]

In Equity. No. 563. In Equity. No. 565

ORDER ENLARGING TIME WITHIN WHICH TO DOCKET THE CASES AND FILE THE RECORD THEREOF—Filed Aug. 23, 1930

It appearing that the parties and their respective counsel are distant; and that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of the record of this Court on the Appeal, and for other good cause shown;

It is ordered that the time in which the Georgia Public Service Commission, and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners thereof, and the State Highway Board of Georgia, et al., complainants, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and their designation for the record of additional appeal papers which have been filed, and in which [fol. 238] to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with the Clerk of the Supreme Court of the United States, be, and it is hereby, enlarged to and including Wednesday the 15th day of October, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Sam'l H. Sibley, United States District Judge.

Dated —— —, ——.

The entry of the foregoing order enlarging the time within which to docket the cases and file the record thereof is hereby consented to.

S. J. Smith, Jr., John S. Burchmore, Solicitors for Complainants in No. 563. Edgar Watkins, Mac Asbill, Solicitors for Complainants in No. 565. Elmer B. Collins, Solicitor for United States of America. Daniel W. Knowlton, Solicitor for Interstate Commerce Commission. Alston, Alston, Foster & Moise, Solicitor- for Atlantic Coast Line Railroad Company. W. N. McGehee, Solicitor for Southern Railway Co.

[fol. 239] IN UNITED STATES DISTRICT COURT

[Titles omitted]

No. 563. In Equity. No. 565. In Equity

STIPULATION RE TRANSCRIPT OF RECORD—Filed November 10, 1930

On the final hearing in the above-entitled cases the plaintiffs have offered in evidence a certified copy of the transcript of the record of the evidence and proceedings before the Interstate Commerce Commission in the proceedings entitled "Rates on Chert, Clay, Sand and Gravel Within the State of Georgia", Docket No. 17517, and other proceedings consolidated and heard therewith upon one record, consisting of a total of approximately 2219 pages of the oral testimony of the witnesses (excluding pages 1013 to 1691, inclusive, which have no materiality upon the issues involved here) and approximately 346 numbered and two unnumbered exhibits; and the same having been received in evidence by the Court; and the plaintiffs further offered in evidence copies of certain tariff schedules of rates filed by the railroad companies respondents in No. 17507 with the Commission under the provisions of [fol. 240] Section 6 of the Act and the same having been received in evidence by the Court; and the plaintiffs having seasonably filed and served a condensed narrative of such portions of the transcript of the evidence and proceedings as the plaintiffs deem material and necessary for the determination of the appeal; and now for the purposes of reducing and settling the record of appeal pursuant to

Equity Rule 75, the parties by their respective counsel (and with the approval of the Court) stipulate:

1. The within and attached narrative of 725 pages is a true and correct transcript in narrative form of all of the oral testimony introduced at the hearings before the Commission material and relevant to the subject matter of this appeal, as the same is contained in the official typewritten transcript in the proceedings referred to.

2. The narrative shall be substituted for the original transcript of the oral testimony so certified by the commission, shall be incorporated upon the record upon appeal and shall have the same force and effect upon the appeal as the original testimony.

3. The exhibits numbered 1 to 244, inclusive, and numbered 98B to 199B, inclusive, as referred to in the certified copy of the transcript and in the aforesaid narrative, and two unnumbered exhibits and the tariff schedules likewise there referred to shall stand as original exhibits and shall be incorporated in the record upon appeal.

4. On the hearing of the appeal before the Supreme Court, the following original exhibits need not be printed, to-wit: Nos. 81, 157, 166, 182, 188, 189, 203, 204, 205, 217, 220, 101B, 153B, and various tariff schedules of the railroad companies respondents before the Commission as above referred to; but either side or any party by counsel or the [fol. 241] Court, or any member thereof, may refer to the aforesaid tariff schedules of the defendants or to any one or more of them or to any part or portion thereof with the same force and effect as if the same had been printed in full in the transcript.

John N. Burchmore, Watkins, Asbill & Watkins, Solicitors for Plaintiffs. Elmer B. Collins, Special Assistant to the Attorney General, for U. S. Edward M. Reidy, for Interstate Commerce Commission. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Company et al. W. N. McGehee, for Southern Railway Company et al. Charles E. Cotterill, Joseph J. Hopkins, for Roquemore Gravel Company et al., Intervenors. Alston, Alston, Foster & Moise, for Atlanta and West Point R. R. Co.

Order

It is ordered, that the within and attached stipulation and narrative be, and the same are hereby, approved; and in preparing, certifying and transmitting the transcript of the record to the Supreme Court of the United States, the Clerk is directed to proceed in accordance therewith.

Atlanta, Ga., November 10th, 1930.

Sam'l H. Sibley, United States District Judge.

[fol. 242] In United States District Court

[Titles omitted]

In Equity. No. 563. In Equity. No. 565

Præcipe for Transcript of Record—Filed Sept. 6, 1930

The Clerk of this Court is hereby directed to prepare and certify the transcript of the record in the above entitles cause for the use of the Supreme Court of the United States by including therein:

1. The original bill filed by the Georgia Public Service Commission, and others, in Docket 563.

2. The original bill filed by the State Highway Board of Georgia, and others, in Docket 565.

3. The order of the District Judge of the United States for the Northern District of Georgia calling a three judge court, and the order consolidating the causes.

4. The answers filed by the defendants in both 563 and 565.

5. The order of March 1st 1930 signed by the three judges composing the specially constituted district court and denying the application for an interlocutory injunction.

6. The opinion of the three judge court dated 3rd day of March, 1930, holding that a temporary restraining order or interlocutory inju-ction should not be granted.

[fol. 243] 7. The order and decree of June 24, 1930 signed by the three judges composing the specially constituted district court and denying the application for permanent injunction and dismissing the bill.

8. Copy of opinion signed by the three judges composing the specially constituted district court in support of the order and decree of June 24, 1930 denying the application for a permanent injunction and dismissing the bill.

9. Petition for appeal and order thereon, assignment of errors, and appeal bond.

10. Citation on appeal and acknowledgment of service thereon.

11. Order of August 14, 1930 enlarging the time within which to file a transcript of the testimony approved in accordance with Equity Rule 75.

12. Transcript of testimony or narrative of evidence and exhibits thereto attached, and order approving the same, together with service thereon.

13. All other exhibits introduced in evidence.

14. This order with service thereon.

This the 23 day of August, 1930.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, S. J. Smith, Jr., Solicitors for Georgia Public Service Commission et al., Petitioners in No. 563. Edgar Watkins, Mac Asbill, Edgar Watkins, Jr., Solicitors for State Highway Board of Georgia et al., Petitioners in No. 565. Elmer B. Collins, Special Assistant to the Attorney General, for United States of America. Edward M. Reidy, for Interstate Commerce Commission. Alston, [fol. 244] Alston, Foster & Moise, for Atlantic Coast Line Railroad Co. et al. W. N. McGehee, for Southern Railway Co. et al. Chas. E. Cotterill, Joseph J. Hopkins, for Roquemore Gravel Co. et al.

Approved.

Sam'l H. Sibley, U. S. District Judge.

[File endorsement omitted.]

[fols. 245-250] Citation, in usual form, showing service on Elmer B. Collins et al., filed August 23, 1930, omitted in printing.

[fol. 251] [File endorsement omitted]

BEFORE THE INTERSTATE COMMERCE COMMISSION

ROQUEMORE GRAVEL COMPANY, ALABAMA SAND & GRAVEL COMPANY, and DIXIE SAND & GRAVEL COMPANY, Complainants,

vs.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, B. L. Bugg, Receiver; Atlanta & West Point Railroad Company; Atlantic Coast Line Railroad Company; Central of Georgia Railway Company; Georgia Railroad; Georgia, Florida & Alabama Railway Company; Georgia and Florida Railway, John Skelton Williams, Receiver; Gulf, Mobile and Northern Railroad Company; Illinois Central Railroad Company; Louisville and Nashville Railroad Company; Macon, Dublin & Savannah Railroad Company; Mississippi Central Railroad Company; Mobile and Ohio Railroad Company; The Nashville, Chattanooga & St. Louis Railway; New Orleans Great Northern Railroad Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; The Alabama Great Southern Railroad Company; New Orleans and Northeastern Railroad Company; St. Louis-San Francisco Railway Company; Seaboard Air Line Railway Company; and The Western Railway of Alabama, Defendants

[fol. 251-a] ORIGINAL COMPLAINT—Filed Dec. 2, 1925

The complaint of the above named complainants respectfully shows unto the Commission as follows:

I

Complain-ts, Roquemore Gravel Company and Alabama Sand & Gravel Company, are corporations having their principal offices in Montgomery, Alabama; and complainant, Dixie Sand & Gravel Company, is a corporation having its principal offices in Chattanooga, Tennessee. All of the complainants are engaged in the production, sale and distribution of gravel and sand from Montgomery and Chattanooga respectively to destinations throughout the States of Georgia and Mississippi.

II

The defendants above named are common carrier railroad corporations engaged in the transportation of gravel and sand and other commodities from Chattanooga and Montgomery to destinations in the States of Georgia and Mississippi and as such defendants are subject to the provisions of the Interstate Commerce Act.

III

In the effort to market successfully their production of gravel and sand in the States of Mississippi and Georgia complainants encounter competition from producers of sand [fol. 251-b] and gravel located in each of such states and from producers of crushed rock located in the State of Georgia.

IV

The intrastate movements of sand and gravel within the States of Georgia and Mississippi and the intrastate movements of crushed rock in the State of Georgia are governed by intrastate charges. The interstate rates from Montgomery and Chattanooga to destinations in the States of Georgia and Mississippi are distances considered relatively higher than such intrastate rates in the States of Georgia and Mississippi. In addition thereto within the State of Georgia the transportation charges on crushed rock are the same for equal distances as the transportation charges in Georgia applicable to gravel although the transportation characteristics surrounding the movement of gravel from Chattanooga and Montgomery into Georgia and crushed rock between points in Georgia are not substantially similar.

Complainants, therefore, respectfully allege that they, the communities of Chattanooga and Montgomery and sand and gravel therefrom are subjected to undue and unreasonable prejudice and disadvantage in favor of intrastate shippers and shipments of sand and gravel between points in the States of Mississippi and Georgia and in favor of crushed rock between points in Georgia in violation of the provisions of Section 3 of the Interstate Commerce Act.

[fols. 251-c-255] V

Complainants further allege that the interstate rates on gravel and sand from Montgomery and Chattanooga to

destinations in the States of Georgia and Mississippi are unjust and unreasonable in violation of the provisions of Section 1 of the Interstate Commerce Act.

Wherefore complainants respectfully pray that this complaint may be filed and served and after due hearing and investigation an order or orders may be made requiring the defendants to cease and desist the aforesaid violations of the Interstate Commerce Act; and that complainants may have such other and further relief as the facts to be shown unto the Commission may require.

Respectfully submitted.

Alabama Sand & Gravel Company, by John D. Roquemore, President. Roquemore Gravel Company, by J. C. Bible, Sales Manager. Dixie Sand & Gravel Company, by J. L. Griffith, Traffic Manager. Chas. E. Cotterill, Attorney for Complainants.

[fols. 255 & 255-1] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. —

In the Matter of Rates on Chert, Clay, Gravel (Washed or Unwashed), Sand (Common) Straight or Sand and Gravel Mixed, Shale, Slag (Granulated, Lump or Pulverized), Stone, Granite (Crushed), Flagging, Rubble or Stone Screenings Interstate Within the State of Georgia.

PETITION ON BEHALF OF CERTAIN GEORGIA CARRIERS

To the Interstate Commerce Commission:

Your petitioners, Atlantic Coast Line Railroad Company, Savannah & Statesboro Railroad, Green County Railroad, Georgia Northern Railway, Flint River & Northeastern Railroad, Georgia, Ashburn, Sylvester & Camilla Railway, Macon, Dublin & Savannah Railroad, Georgia, Florida & Alabama Railroad, and Tallulah Falls Railroad, hereinafter called petitioners, present this petition and re-
[fol. 255-2] spectfully represent and show unto the Commission as follows:

First

Petitioners are corporations organized and existing under the law of the respective states in which they were incorporated. Each of your petitioners has been for many years past, and is now, engaged in operating lines of railroad within the State of Georgia, and has been and is now engaged in business of transporting passengers and freight intrastate between points in the State of Georgia, and is likewise engaged and has for years past, been engaged, in transporting passengers and freight moving in interstate commerce between points in the State of Georgia, and points in other states. Each of your petitioners is a Common Carrier of passengers and freight by railroad, subject to the provisions of the Act of Congress known as the Interstate Commerce Act and the Transportation Act of 1920, and is a party to and participates in through interstate freight routes and through freight rates, including rates on sand and gravel, and articles taking the same rates, in car-loads, and tariffs applicable between points in the State of Georgia and points in other states.

Second

Petitioners further show that by Section 422 of the Transportation Act, 1920, this Honorable Commission is required [fol. 255-3] to initiate, modify, establish or adjust rates (which by the express definition of said Section includes rates, fares and charges, and all classifications, regulations and practices relating thereto), so that the carriers as a whole in each rate group which the Commission may designate, will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment earn an aggregate net railway operating income, as in said section defined, equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation; and that for the two years beginning March 1, 1920, the Commission should take as such fair return a sum equal to five-and-one-half per cent of such aggregate value but might, in its discretion, add thereto a sum not exceeding one-half of one percent of such aggregate value to make provision for the uses and purposes of said section prescribed.

It was thus made the duty of this Honorable Commission to establish such rates as would produce on all traffic, state and interstate, of such carriers, for the two years beginning March 1, 1920, an annual net railway operating income in the aggregate equal to five-and-one-half or six per cent, as the case may be, of the aggregate value of the railway property of the carriers in the group held for and used in the service of transportation.

This Honorable Commission, must, therefore, under the express requirements of the law make up and provide out [fol. 255-4] of rates on interstate traffic all of the required amount of net revenue prescribed by the Act that is not contributed by the state traffic of the carriers in the group.

Third

Petitioners show that in the latter part of April and the early part of May, 1920, applications were filed by the Railroad Companies of the United States, including petitioners, wherein this Commission was requested to increase rates, fares, and charges, so that the railroads might earn the net railway operating income provided by law. Upon the filing of these applications, hearings were had before this Honorable Commission and as a result of these hearings, this Commission promulgated, on the 29th day of July, 1920, its report and order in the cause designated on the docket of this Commission as Ex Parte 74 and styled, "In the Matter of the Applications of Carriers in Official, Southern and Western Classification Territories for Authority to Increase Rates." This report and accompanying order are respectfully asked to be made a part of this petition.

Fourth

Your petitioners further show that, as will appear at page 229 of said report, this Commission, in accordance with the provisions of the Transportation Act and for the purpose of Ex Parte 74, tentatively determined the aggre- [fol. 255-5] gate value of all the property of the carriers held for and used in the service of transportation to be $18,900,000,000. In making this tentative valuation, this Commission did not undertake to separate and did not separate property devoted to the purpose of interstate transportation from property devoted to intrastate transporta-

tion, so that the values found in the report include the property of carriers whether used in interstate or intrastate transportation.

Fifth

In its opinion in Ex Parte 74 this Commission, acting under authority of the Transportation Act, divided the United States into four groups for rate making purposes. The territorial limits of these groups are fully set out in this opinion, and need not be here repeated. The State of Georgia lies within the Southern group. The Commission found that the carriers were entitled to earn six per cent upon the aggregate value of the property in each group devoted to the service of transportation, and that, in order to earn that return, the following increase (among others) should be made in the Southern Group in all rates, fares and charges, whether applicable upon interstate or intrastate traffic:

Freight transportation rates, switching charges, and other special charges enumerated in the report were permitted to be increased 25 per cent.

[fol. 255-6] Sixth

Petitioners further show that this Commission in authorizing an increase in the rates, fares and charges for the transportation of freight and passengers, did not determine and conclude that the increases permitted and directed in Ex Parte 74 should apply only to interstate transportation, but it was determined by this Commission that the increases there allowed, if applied both to interstate and intrastate traffic, would yield no more than was necessary to permit the carriers to earn six per cent upon the value of their property held for and used in the service of transportation. In other words, there was no attempt made by this Commission to make any separation between interstate revenue and intrastate revenue, or between the expenses for handling interstate traffic and the expenses for handling intrastate traffic.

Seventh

There were present and participating in the proceedings before this Commission in Ex Parte 74 representatives of

the State Commissions, including the Georgia Public Service Commission.

Eighth

Petitioners state that, as will be seen from an examination of the report in Ex Parte 74, it was necessary for the carriers to have the stated increases in freight rates and [fol. 255-7] passenger fares and other changes in order that their net income might equal the amount provided in the Transportation Act, and if they were not permitted to increase intrastate freight rates, as well as passenger fares and other charges, in the State of Georgia in the amounts permitted by this Commission, the Railroads in the Southern Group, in which the State of Georgia was situated, would fail to earn the amount of net revenue authorized in the Transportation Act.

Petitioners further show that this Honorable Commission having in Ex Parte 74, in the performance of its duties under the Act determined the amount of net revenue required by Section 422 of the Transportation Act, 1920, and having declared that this amount should be provided by a uniform increase of rates applicable alike to interstate and intrastate traffic in the group, it was obvious that if the intrastate rates in any state were not increased to correspond with the increases authorized and made in interstate rates under the decision and order of this Commission in Ex Parte 74, the carriers in that particular group would not receive the net railway operating income which this Commission intended they should receive and to which this Commission found they were entitled, unless the deficit so produced was made good by a further increase in the rates on interstate traffic.

Ninth

Following the decision of the Commission in Ex Parte 74 [fol. 255-8] petitioners made application to the Georgia Public Service Commission for authority, among other things, to increase freight rates and charges, including rates and charges on sand and gravel, and articles taking the same rates intrastate in the State of Georgia, in the same amount and to the same extent that this Commission in Ex Pare 74 authorized increases in rates and charges for interstate transportation.

Hearing was held on such application before the Georgia Public Service Commission on August 17, 1920, with the result that the Georgia Public Service Commission on August 20, 1920, entered its order wherein and whereby the said Georgia Public Service Commission found that the increases sought by the carriers, including increases in the rates and charges on sand and gravel, and articles taking the same rates were reasonable and proper, and should be granted, with certain exceptions. The increased rates authorized by the said Georgia Public Service Commission on sand and gravel and articles taking the same rates became effective September 1, 1920, and remained in effect until July 1, 1922.

Tenth

Your petitioners further show that on or about December 1, 1921, this Commission instituted proceeding on its own motion, bearing the title Reduced Rates 1922, "In the Matter of Rates, Fares and Charges of Carriers by Railroad Subject to the Interstate Act," Docket No. 13292. [fol. 255-9] The purpose of this investigation was to determine what should be on and after March 1, 1922, a fair return upon the value of the property of carriers held for and used in the service of transportation; what was the aggregate value of such property; and what rate reductions or charges, if any, should be made in order that the carriers might earn such fair return upon the value of their property. In said proceeding, testimony was heard, arguments were had, and on May 16, 1922, this Commission filed its report in the said cause, among other things, fixed five and three-quarters per cent (5¾ per cent) as a reasonable rate of return upon the aggregate value of railway property of carriers, and recommended that a horizontal decrease of approximately ten per cent be made in all existing rates, with certain exceptions, set out fully in the report, which exceptions dealt with rates which had been voluntarily or otherwise reduced by the carriers between August 26, 1920, and May 16, 1922. So far as Southern territory was concerned this reduction was brought about by requiring the carriers to publish rates which would be twelve-and-one-half per cent higher than the rates in effect

on August 25, 1920, the date prior to the effective date of the increases allowed in Ex Parte 74 with the exceptions already noted. This recommendation of the Commission was accepted by petitioners and practically all other carriers operating in the United States and as a result of this decision effective July 1, 1922, interstate rates and intrastate rates throughout the United States were reduced in [fol. 255-10] the amounts recommended by the Commission in its said decision in Docket 13292.

Your petitioners and all other carriers in the State of Georgia, effective July 1, 1922, voluntarily reduced all intrastate rates, including the rates on sand and gravel, and articles taking the same rates, to the same basis and by the same amounts as corresponding interstate rates were reduced. The rates so established, effective July 1, 1922, on sand and gravel and articles taking the same rates intrastate in Georgia remained in effect without change until April 1, 1925.

Eleventh

By order dated July 14, 1921, the Railroad Commission of Georgia required the railroads operating in that state to file with the Commission revised class and commodity rates for the transportation of intrastate traffic within the State of Georgia, and entered upon an investigation with respect to the entire rate structure in the State of Georgia including the rates on sand and gravel and articles taking the same rates, in carloads. On February 25, 1925, after hearings, the Georgia Public Service Commission entered its report and order in that proceeding in so far as it related to rates on sand and gravel and articles taking the same rates, in carloads. By its order of February 25, 1925, the carriers operating in the State of Georgia were required to publish and make effective on or before April 1, 1925, certain rates on sand and gravel and articles taking the [fol. 255-11] same rates, in carloads, for application intrastate in the State of Georgia. A copy of the said order of the Georgia Public Service is hereto attached as Exhibit "A" and made a part of this petition.

The rates ordered established by the Georgia Public Service Commission were published by petitioners and became effective April 1, 1925, and are now being applied in accordance with the terms of said order of the Georgia Public Service Commission.

The effect of the aforesaid order of the Georgia Public Service Commission was to very substantially reduce the revenue of these petitioners on sand and gravel and articles taking the same rates moving intrastate, in carloads, between points in the State of Georgia.

Petitioners assert that intrastate rates on sand and gravel and articles taking the same rates, in carloads, in effect intrastate in Georgia prior to April 1, 1925, were unreasonably low rates and on the whole lower than the level of interstate rates applied from points in other states to points of destination in Georgia, which interstate rates were not above the level of reasonable rates.

Twelfth

The petitioners aver that the rates prescribed by the Georgia Public Service Commission in its said order of February 25, 1925, on sand and gravel and articles taking the same rates, in carloads, for intrastate application between points in the State of Georgia, and now in effect, give [fol. 255-12] an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Georgia on the one hand, and persons and localities in interstate commerce on the other hand, and are unjustly discriminatory against interstate commerce and place an undue burden on interstate commerce, in violation of Section 3 and subdivisions 3 and 4 of Section 13 of the Interstate Commerce Act as amended by Section 416 of the Transportation Act of 1920.

Petitioners further show that if the said rates on sand and gravel and articles taking the same rates so established by the Georgia Public Service Commission are allowed to remain in effect the purpose of the Interstate Commerce Act will be defeated and the result will be an undue and unreasonable advantage, preference or prejudice between persons and localities in interstate commerce on the one hand, and intrastate commerce on the other, and that the interstate commerce will be unduly, unreasonbaly and unjustly discriminated against, all of which is forbidden and declared to be unlawful by the Interstate Commerce Act.

In order that this Commission may be advised of the extent by which the rates which the Georgia Public Service Commission has required the carriers to establish on sand and gravel and articles taking the same rate, in carloads,

will operate to the prejudice and disadvantage of persons, firms, and localities in interstate commerce, your petitioners set out in exhibit B attached to and made a part of this petition a few only of the many instances in which the in-[fol. 255-13] trastate rates will give an undue and unreasonable preference and advantage to intrastate shippers and cause an undue and unreasonable prejudice against interstate shippers of these commodities.

It will be noted from this exhibit that the present rates from Norris, Wrens and Georgetown, Georgia, on these commodities are quite materially lower for like distances than the rates from Steel Creek, S. C., and Montgomery, Ala., to these destinations. It should be remembered in this connection that rates from Steel Creek, S. C., are rates that were suspended by the Commission in Investigation and Suspension Docket No. 1848 and that after full hearing, briefing and argument before the Commission they were found justified in its report, 83 I. C. C. 436. The present rates from Montgomery are practically the same for like distances as the rates from Steel Creek. Shippers of these commodities at Steel Creek and at Montgomery are in active competition for the sale of their products at the destinations shown with shippers at Georgetown, Wrens and Morris, Ga.

The disparity between the interstate rates which were found justifi*ed* by the Commission in I. & S. Docket 1848 and the intrastate rates which the Railroad Commission of Georgia has required the carriers to establish from Georgia Shipping points produce an undue and unreasonable disadvantage and discrimination against shippers of sand and gravel from Steel Creek and Montgomery, and an undue and unreasonable preference of shippers of sand and gravel located at Georgia points. There are no cir-[fol. 255-14] cumstances of transportation with which we are acquain-ed which justify lower rates from these Georgia points, for like distances, than are applied from Steel Creek and from Montgomery.

Your petitioners show that they have set out only a few examples showing manifest discrimination against interstate commerce and manifest prejudice and disadvantage to persons and localities engaged in interstate commerce in favor of intrastate commerce and persons and localities engaged in intrastate commerce. The few in-

stances above given are illustrative of and represent a situation which prevails generally as to interstate rates on sand and gravel and articles taking the same rates, from points in states other than Georgia to Georgia destinations as compared with Georgia intrastate rates on sand and gravel and articles taking the same rates prescribed by the Georgia Public Service Commission and now in effect.

Thirteenth

Your petitioners aver that the interstate rates on sand and gravel, and articles taking the same rates, in carloads, now in effect from points in Florida, South Carolina, Tennessee, Alabama, and Mississippi to points in the State of Georgia, are in all respects reasonably low rates. Petitioners further aver that the rates prescribed by the Georgia Public Service Commission on sand and gravel and [fol. 255-15] articles taking the same rates, in carloads, for intrastate application between points in Georgia, and now in effect, are unreasonably and unduly low.

Petitioners further show that the rates so prescribed by the Georgia Public Service Commission are generally materially lower than interstate rates on sand and gravel, in carloads, prescribed by this Commission after extensive hearings and investigation for application from points in South Carolina to points in Georgia and Florida.

Petitioners further show that there are no transportation conditions which warrant or justify a level of rates intrastate in Georgia lower than the level of interstate rates between points in Georgia and points in contiguous states or elsewhere in the same general territory.

Fourteenth

One of the effects of the order of the Georgia Public Service Commission and the reduced rates on sand and gravel and articles taking the same rates, in carloads, established and made effective by petitioners intrastate between points in the State of Georgia in obedience to said order, will be to greatly reduce the revenues of petitioners derived from the transportation of sand and gravel, and articles taking the same rates, in carloads, intrastate between points in Georgia.

Petitioners further show that they are advised and believe that shippers of sand and gravel located in states other than Georgia will find it extremely difficult if not [fol. 255-16] impossible to continue to ship sand and gravel and articles taking the same rates into Georgia on the present reasonably low interstate rates in competition with Georgia dealers and manufacturers who ship on the extremely and unreasonably low rates prescribed by the Georgia Public Service Commission. Georgia consumers will discontinue buying large quantities of sand and gravel and articles taking the same rates at points in other states and this tonnage which has moved in the past at reasonably low interstate rates will be supplanted by tonnage from Georgia points which will move on the unduly and unreasonably low Georgia intrastate rates which are generally materially less than the reasonable interstate rates into Georgia, thereby resulting in great loss of revenue to petitioners.

Fifteenth

Wherefore these petitioners respectfully request this Commission to enter upon an investigation as provided in Paragraph 3 of section 13 of the Interstate Commerce Act, with reference to the rates which are the subject matter of this complaint, and after such investigation to enter such order as is provided in paragraph 4 of section 13 of the Interstate Commerce Act, as will effect a removal of the undue prejudice now existing.

Respectfully submitted.
John A. Streyer, Henry Thurtell, Attorneys for Petitioners.

[fol. 255-17] Statement Showing Distances and Rates on Sand and Gravel, Carloads, in Effect prior to April 1, 1925 (Except as Noted), and Established April 1, 1925, from Norris, Ga. (Ga. R. R.), Wrens, Ga. (G. & F. Ry.), and Georgetown, Ga. (C. of Ga. Ry.), to Representative Destinations in Georgia Compared with Present Rates to Same Destinations from Steel Creek, S. C. (C. & W. C. Ry.), and Montgomery, Ala.

In Cents per Hundred Pounds

From	Norris, Ga.			Wrens, Ga.			Georgetown, Ga.			Steel Creek, S. C.		Montgomery, Ala.	
To	Miles	A	B	Miles	A	B	Miles	A	B	Miles	Present rate	Miles	Present rate
Jessup, Ga.	220	167	130	159	158	120	218	...	130	170	140	294	180
Blackshear, Ga.	250	...	140	189	...	130	188	...	120	201	144	325	...
Waycross, Ga.	245	176	140	185	162	130	177	...	120	210	149	277	171
Homerville, Ga.	250	...	140	211	...	140	203	...	130	236	153	289	167
Valdosta, Ga.	224	176	140	206	149	140	168	...	120	270	162	255	158
Ousley, Ga.	233	...	140	215	...	140	158	...	110	280	162	245	158
Quitman, Ga.	241	176	140	220	167	140	151	...	110	287	167	238	153
Dixie, Ga.	248	...	140	230	...	150	144	...	110	295	167	231	...
Boston, Ga.	249	176	140	237	...	150	136	...	110	303	167	223	153
Cairo, Ga.	252	176	140	263	...	160	139	...	110	328	...	197	144
Bainbridge, Ga.	254	176	150	285	...	160	160	...	110	351	...	175	140
Willacoochee, Ga.	206	167	130	161	140	130	129	...	100	243	158	339	176
Brookfield, Ga.	185	...	120	182	...	130	114	...	100	275	162	318	...
Tifton, Ga.	177	158	120	188	...	130	107	...	100	281	167	210	167
Ty Ty, Ga.	186	...	120	199	...	140	98	...	100	291	171	302	...
Sylvester, Ga.	175	162	130	206	...	140	86	...	100	302	171	289	167
Willingham, Ga.	194	162	130	215	...	140	81	...	100	308	171	285	...
Albany, Ga.	179	158	120	210	...	140	41	...	60	322	176	169	...
Camilla, Ga.	204	167	130	236	...	160	91	...	100	347	...	244	158
Petty, Ga.	209	...	130	140	...	150	96	...	100	343	...	239	...
Pelham, Ga.	213	167	130	244	...	150	100	...	100	339	...	236	153

A—Rates prior to April 1, 1925.

B—Rates established April 1, 1925, apply on Sand and Unwashed Gravel; washed Gravel 10 per ton higher.

Tariff Authorities: Georgia R. R. I. C. C. A-43 (G. F. O. Ry. 4987). Georgia & Florida Ry. I. & S. 439 (G. F. O. 4759) and G. & F. Ry. I. C. C. 416 (F. F.-155-11). C. & W. C. Ry. I. C. C. A-829 (G. F. O. Ry. 4707.) Agent Glenn's Montgomery-Selma Tariff 4, C. C. A-494 (G. F. O.-2232). Agent Glenn's Georgia Local & Joint Mileage Tariff 2, I. C. C. A-483 (G. F. O.-2740).

Wilmington, N. C., May 26, 1925.

[fol. 255-18] By the Georgia Public Service Commission

Dockets 15416, 15997

In re Revision of Freight Rates Between Points Within the State of Georgia

Chert, Gravel, Sand, Stone, etc.

Schedules of Commodity Rates

Issued Feb. 25th, 1925. Effective April 1st, 1925

[fol. 255-19] Paul B. Trammell, Chairman; John T. Boifeuillet, Vice-Chairman; James A. Perry, J. D. Price, Walter R. McDonald, Commissioners

Albert Collier, Secretary. E. M. Price, Rate Expert. W. E. Watkins, Special Attorney. J. Houstoun Johnston, Consulting Engineer. T. J. Freer, Official Reporter

Telephone: Main 0016

Office of the Georgia Public Service Commission, Atlanta

Files 15416, 15997

February 25th, 1925.

In re Revision of Rates Between Points in Georgia on Sand, Gravel, Crushed Stone, etc.

Upon consideration of the record in the above stated case, and of the evidence and arguments submitted at the hearings had thereon, it is,

Ordered: (1) That, effective on and after April 1st, 1925, and until the further order of this Commission, the following shall be the rules, classifications, descriptions and ratings, regulations and the maximum rates governing the movement and transportation of freight traffic provided for in this order between points wholly within the State of Georgia, and to be used and applied by each of the railroads operating within the State of Georgia, in the manner and as hereinafter directed.

Ordered: (2) That the ratings provided for in this order shall be applied to all Freight Tariff Class A and Freight Tariff Class B railroads, as designated in Class Rate Order, dated February 28th, effective May 1st, 1923.

Ordered: (3) That the specific commodity rate tables as shown in the following pages shall be applied as follows:

Rate Table No. 1. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class A.

Rate Table No. 2. To joint line application between points within this State, located on two or more of the severally named railroads in Freight Tariff Class A.

Rate Table No. 3. To joint line application between points within this State, located on one or more Freight Tariff Class A railroads, and one or more Freight Tariff Class B railroads.

Rate Table No. 4. To single line application between points within this State, located on each of the severally named railroads in Freight Tariff Class B.

Rate Table No. 5. To joint line application between points within this State, located on two or more of the severally named railroads in Freight Tariff Class B.

Ordered further: (4) That on or before the effective date of this Order, all class and commodity rates between points within this State, that are higher than the commodity rate schedules and classification ratings provided for in this order, shall be canceled, and the commodity rate schedules and classification ratings provided in this order, observed as a maximum.

Ordered further: (5) All carriers are authorized to cancel all class and commodity rates that are lower than the commodity rate schedules and classification ratings provided in this order and observe as a maximum the commodity rate schedules and classification ratings authorized herein, except that in no instance shall the rates on the commodities covered by this order be higher, between any points in Georgia, than the interstate rates contemporaneously in effect on the same Commodities between points in [fol. 255-20] Georgia and points in other states, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul.

Ordered further: (6) The Commission's Freight Rule No. 27 is hereby suspended, and superseded by Rate Tables 2, 3 and 5, in constructing joint line rates on the commodities covered by this order.

Ordered further: (7) The joint rates provided for herein are to be divided on the same basis as provided for in the Commission's Class Rate Order, dated February 28th, effective May 1st, 1923.

Ordered further: (8) That when, by the use of the schedules of rates authorized in this order rates are established between competitive points by a carrier, or carriers, whose lines form the lowest rate making route, the carrier, or carriers, forming the longer distance, or higher rate making route, are permitted to meet such competition, and to charge higher rates at intermediate points, but in no instance shall rates be charged higher than for the single or joint line scale of rates authorized herein, for the actual distance, via the route making the lowest rate, to, from, or between such intermediate points, In instances where the carriers establish between any points, lower rates than authorized herein, no higher rates shall be charged at any intermediate point, without the approval of the Commission having first been obtained.

By order of the Georgia Public Service Commission.
Albert Collier, Secretary. Paul B. Trammell, Chairman.

Index to Commodities

	Commodity group
Chert, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22
Clay, crude, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22
Gravel, (washed) in bulk, carload minimum weight 60,000 lbs.	22
Gravel, (not washed) or sand and clay gravel, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22
Sand, (common) straight, or sand and gravel mixed, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22

	Commodity group
Shale, in bulk, carload minimum weight 60,000 lbs. Rates 10c per ton less than	22
Slag, granulated, lump or pulverized, in packages or in bulk, carload minimum weight 60,000 lbs.	22
Stone, Granite, Crushed, Flagging, Rubble or Stone Screenings, in bulk, in straight or mixed carload minimum weight 60,000 lbs.	22

[fols. 255-21 & 256] Commodity Rates

Rates in Cents per Hundred Pounds

Commodity Group No. 22

Rate Tables Distance	1	2	3	4	5
5 Miles & Under	2½			3	
10 " & Over 5	2½	3	3½	3	3½
15 " " 10	2½	3	3½	3	3½
20 " " 15	3	3½	4	3½	4
25 " " 20	3	3½	4	3½	4
30 " " 25	3	3½	4	3½	4
35 " " 30	3½	4	4½	4	4½
40 " " 35	3½	4	4½	4	4½
45 " " 40	3½	4	4½	4	4½
50 " " 45	4	4½	5	4½	5
55 " " 50	4	4½	5	4½	5
60 " " 55	4	4½	5	4½	5
65 " " 60	4½	5	5½	5	5½
70 " " 65	4½	5	5½	5	5½
75 " " 70	4½	5	5½	5	5½
80 " " 75	4½	5	5½	5	5½
85 " " 80	5	5½	6	5½	6
90 " " 85	5	5½	6	5½	6
95 " " 90	5	5½	6	5½	6
100 " " 95	5	5½	6	5½	6
110 " " 100	5	5½	6	6	6
120 " " 110	5½	5½	6	6	6
130 " " 120	5½	5½	6	6	6
140 " " 130	6	6	6½	6½	6½
150 " " 140	6	6	6½	6½	6½
160 " " 150	6	6	6½	6½	6½

Rate Tables Distance		1	2	3	4	5
170	Miles & Over 160	6½	6½	7	7	7
180	" " 170	6½	6½	7	7	7
190	" " 180	6½	6½	7	7	7
200	" " 190	7	7	7½	7½	7½
210	" " 200	7	7	7½	7½	7½
220	" " 210	7	7	7½	7½	7½
240	" " 220	7½	7½	8	8	8
260	" " 240	7½	7½	8	8	8
280	" " 260	8	8	8½	8½	8½
300	" " 280	8	8	8½	8½	8½
320	" " 300	8	8	8½	8½	8½
340	" " 320	8½	8½	9	9	9
360	" " 340	8½	8½	9	9	9
380	" " 360	8½	8½	9	9	9
400	" " 380	9	9	9½	9½	9½
420	" " 400	9	9	9½	9½	9½
440	" " 420	9	9	9½	9½	9½
460	" " 440	9½	9½	10	10	10

[fol. 257] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

CORRECTED ORDER—Oct. 5. 1925

It appearing, That a petition has been filed on behalf of certain steam railroads operating in the state of Georgia averring that the Georgia Public Service Commission by order promulgated on the 25th day of February, 1925, required petitioners to establish rates on chert, clay, sand and gravel within said state which are less than those permitted or required to be established by this Commission for interstate traffic;

It further appearing, That said petitioners allege that the observance by themselves of said order of the Georgia Public Service Commission will cause and result in undue and unreasonable preference and advantage to intrastate

commerce, to the undue and unreasonable prejudice and disadvantage of interstate and will result in unjust and unreasonable discrimination against interstate Commerce;

And it further appearing, That by said petition there have been brought in issue rates imposed by the authority of the state of Georgia:

It is ordered, (1) That an investigation be, and it is hereby, instituted to determine whether the rates on chert, clay, sand and gravel required by the Georgia Public Service Commission to be maintained by said railroads, cause or will cause and undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

(2) That all railroads subject to our jurisdiction operating within said state of Georgia be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the state of Georgia be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga.

(3) That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission, at Washington, D. C.

(4) That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fols. 258-269] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

SUPPLEMENTAL ORDER—Jan. 4, 1926

The Commission having under further consideration the petition filed on behalf of certain steam railroads operating in the State of Georgia upon which petition the order of the Commission entered in this proceeding on the 5th day of October, 1925, was based.

It is ordered, That the said order of October 5, 1925, be, and it is hereby, amended so as to include within its terms an investigation to determine whether the rates on chert, clay, gravel (washed or unwashed), sand (common) straight, or sand and gravel mixed, shale, slag (granulated, lump or pulverized), stone, granite (crushed), flagging, rubble or stone screenings, required by the Georgia Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

(2) That all railroads subject to our jurisdiction operating within said state of Georgia be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the state of Georgia be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga.

(3) That notice of this proceeding be given to the public by posting a copy of this order in the office of the Secretary of the Commission, at Washington, D. C.

(4) That this proceeding be assigned for hearing February 15, 1926, ten o'clock a. m. at Atlanta Biltmore Hotel, Atlanta, Georgia, before Commissioner Lewis.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 270-1] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket 17517 et al.

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia (and Consolidated Cases)

MOTION FOR ENTRY OF MINIMUM-RATE ORDER—Filed Sept. 15, 1927

Come now the complainants in Docket Nos. 17689, 17699 and Sub-No. 1, 17763, 17764 and Sub-No. 1, and respectfully show unto the Commission as follows:

I

Under date of January 21, 1927, this Commission in its decision in these proceedings (reported in Volume 122, I. C. C. beginning with page 133) dealt both generally and specifically with the matter of Southern freight rates on both fine and coarse aggregate.

[fol. 270-2] With particular reference to the matter of rates to Birmingham, Alabama, from points in the Junction City District of Georgia, the following was said:

We have heretofore discussed the 79-cent rate maintained by the Atlanta, Birmingham & Atlantic and the Central of Georgia on sand from points in the Junction City, Ga., district mentioned in No. 17689, to Birmingham. It is admitted to be a relatively low rate and, as has been stated, is maintained in order that the Junction City district shippers may ship sand to Birmingham on a parity with Montgomery shippers. The rates between points in Alabama

are not in issue in these proceedings and the above-named carriers serving the Junction City district and the shippers there located strongly urge that we do not disturb the present parity of rates, at least until the rates from Montgomery to Birmingham are revised. To do so, they assert, will mean serious loss to the Junction City district shippers as well as the carriers. We are impressed with this contention and in view of the situation disclosed we find that we are not here justified in disturbing the present adjustment. Under the circumstances disclosed, No. 17689 will be dismissed without prejudice to the right of complainants to seek a reopening of same in the event that as a result of these proceedings the intrastate rates between points in Alabama are revised to the level herein approved for interstate application and the Atlanta, Birmingham & Atlantic and the Central of Georgia do not follow with a like revision of the interstate rates from the Junction City district to Birmingham.

[fol. 270-3]

II

Under date of August 18 the Alabama Public Service Commission in its Docket No. 4136, rendered a decision and order which in general adopted for intrastate application within Alabama the mileage scale of this Commission so prescribed in Docket No. 17517 and consolidated cases. But in such decision and order of the Alabama Public Service Commission there was temporarily withheld authority to increase from the Montgomery District to Birmingham the charges now in effect, such exception being in terms controlled by the fact that the Central of Georgia Railway and the Atlanta, Birmingham & Coast Railroad were then maintaining to Birmingham from the Junction City District in Georgia a rate on sand no higher than the existing rate from the Montgomery District to Birmingham, notwithstanding the very much longer hauls from points in the Junction City District.

III

Under date of September 2 the Alabama Public Service Commission officially transmitted to this Commission the following communication:

Referring to our decision and order of August 18, 1927, in the matter of intrastate rates on chert, gravel, sand, slag

and stone, carloads, between points in Alabama, copy of which you have received:

[fol. 270-4] It was necessary, in order to prevent serious injury to Alabama sand shippers, to withhold any revision of the specific sand rates from Alabama pits to the Birmingham district until a corresponding revision on the scale basis is made from pits in the Junction City, Georgia, district; but, in order to hasten the correction of this troublesome situation, this is to advise you that this Commission will authorize and require a revision to the scale basis of the sand rates into the Birmingham district excepted from the decision and order above mentioned to become effective concurrently with a revision to the scale basis of the rates from the Junction City, Georgia, district to the Birmingham district, if your Commission sees fit to make an order to that effect.

IV

On or about September 1, 1927, there were filed with this Commission, to become effective October 1st, 1927, tariffs containing individual and joint rates on fine and coarse aggregates covering the larger part of interstate traffic in Southern territory, except movements into Florida and within the Mississippi Valley. But in such tariffs the Central of Georgia Railway Company and the Atlanta, Birmingham & Coast Railroad Company excepted from the operation of such revision the rates on sand from points in the Junction City district to Birmingham.

[fol. 270-5] V

In the original hearing, in the original briefs, and in the oral argument all the essential facts were disclosed to this Commission and all the considerations affecting the matter were presented. Now that the Alabama Commission has removed the only obstacle which this Commission found in the way of a minimum rate order from points in the Junction City District to Birmingham, there is no circumstance or occasion for any further delay, or reason for withholding the entry of such minimum rate order and without any further hearing.

VI

Movants also respectfully point out that effective October 1 the entire interstate rate structure in Southern territory on coarse and fine aggregates will uniformly be on the basis of the scale heretofore prescribed by this Commission with the exception of rates into Florida and over certain railroads wholly within the so-called Mississippi Valley; that likewise such scale is already determined for application wholly within the States of North Carolina, South Carolina and within Alabama, with the temporary exception of rates from Montgomery to Birmingham; that proceedings are pending before the Georgia State Commission in which the railroads are seeking authority to make such scale effective therein; and that unless this Commission promptly enters a minimum rate order compelling such [fols. 270-6-281] scale to be charged from points in the Junction City District to Birmingham, the effect would necessarily be a rapid disintegration of the entire scheme of uniformity presupposed by this Commission in establishing and prescribing such scale.

VII

The Atlanta, Birmingham & Coast Railroad Company is now an operating subsidiary of the Atlantic Coast Line Railroad Company, having formerly been an independent railroad known as the Atlanta, Birmingham & Atlantic.

Wherefore it is respectfully prayed that the above-entitled proceedings be reopened for entry of an order or orders commanding and requiring the Central of Georgia Railway Company and the Atlanta, Birmingham & Coast Railroad Company to establish within not more than thirty days thereafter from points in the Junction City district to points in the Birmingham district such rates as individually shall not be less than those contained and prescribed in the so-called Southeastern mileage scale appearing in the decision of these cases under date of January 21, 1927.

Respectfully submitted.

Chas. E. Cotterill, Attorneys for Movants, Suite 505 Grant Bldg., Atlanta, Ga.

[fol. 281-1] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

SUPPLEMENTAL PETITION ON BEHALF OF RESPONDENT CARRIERS OPERATING IN THE STATE OF GEORGIA

Come now the Atlantic Coast Line Railroad Company, Southern Railway Company, Seaboard Air Line Railway Company, Louisville & Nashville Railroad Company, Central of Georgia Railway Company, Atlanta & West Point Railroad Company, Georgia Railroad, Nashville, Chattanooga & St. Louis Railway, and Atlanta, Birmingham & Coast Railroad Company, hereinafter referred to as petitioners, and respectfully show to the Commission as follows:

[fol. 281-2] I

This petition is filed on behalf of the above-named petitioners, as well as on behalf of all other carriers by steam railroad operating in the State of Georgia, respondents in this proceeding under the Commission's order of investigation dated October 5, 1925, as amended by supplemental order dated January 4, 1926.

II

Petitioners show that in said order of investigation dated October 5, 1925, it was recited that a petition had been filed on behalf of certain steam railroads operating in the state of Georgia, averring that the Georgia Public Service Commission, by order promulgated on the 25th day of February, 1925, had required petitioners to establish rates on chert, clay, sand and gravel within said state which are less than those permitted or required to be established by this Commission for interstate traffic; that said petitioners alleged that the observance by themselves of said order of the Georgia Public Service Commission would cause and result in undue and unreasonable preference and advantage to

intrastate commerce, to the undue and unreasonable prejudice and disadvantage of interstate commerce and would result in unjust and unreasonable discrimination against interstate commerce; and that it was accordingly ordered by this Commission, among other things, as follows:

[fol. 281-3] "It is ordered, (1) That an investigation be, and it is hereby, instituted to determine whether the rates on chert, clay, sand and gravel required by the Georgia Public Service Commission to be maintained by said railroads, cause or will cause an undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners, in order to remove such advantage, preference, prejudice or discrimination, if any, as may be found to exist.

"(2) That all railroads subject to our jurisdiction operating within said state of Georgia be, and they are hereby, made respondents to this proceeding, and that a copy of this order be served upon each of said respondents, and that the state of Georgia be notified of this proceeding by sending copies of this order, and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga."

By the supplemental order dated January 4, 1926, it was further ordered as follows:

"It is ordered, That the said order of October 5, 1925, be, and it is hereby, amended so as to include within its terms [fol. 281-4] an investigation to determine whether the rates on chert, clay, gravel (washed or unwashed), sand (common) straight, or sand and gravel mixed, shale, slag (granulated, lump or pulverized), stone, granite (crushed), flagging, rubble or stone screenings, required by the Georgia Public Service Commission to be maintained by said railroads, cause or will cause any undue or unreasonable ad-

vantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce; and as to what rates, if any, or what maximum or minimum, or maximum and minimum shall be prescribed to be charged by the petitioners in order to remove such advantage preference, prejudice or discrimination, if any, as may be found to exist."

III

That pursuant to the aforesaid orders, and after due notice given in accordance therewith, hearings were thereafter held at which time there were consolidated and heard with this proceeding various formal complaints alleging, among other things, undue discrimination against interstate shippers located at Montgomery, Ala., Chattanooga, Tenn., and other places, and undue preference in favor of intrastate shippers within the state of Georgia, said complaints being more fully described in the Commission's report herein dated January 21, 1927, 122 I. C. C. 133. As the [fol. 281-5] result of said hearings the Commission found and stated in its report of January 21, 1927, that the rates maintained by the respondents herein, as well as by the defendants in the formal complaint cases referred to, for the interstate transportation of sand, gravel (washed or unwashed), clay, gravel, crushed stone and slag, in straight or mixed carloads, between points in the state of Georgia and between points in the state of Georgia and points in other states in Southern territory, except Florida, were and for the future will be unreasonable to the extent that they exceed certain distance scales of single-line and joint-line rates as set forth in said report at page 166; except that when the transportation is in whole or in part over either of the so-called short lines, shown in Appendix B to said report, the rates were found to be unreasonable to the extent that they exceed the aforesaid distance scales plus an arbitrary of 25 cents per net ton, which latter is to accrue solely to the short line (122 I. C. C. 166). By its order accompanying said report, the respondents were ordered and directed to make effective the rates thus found reasonable

for interstate application on or before March 2, 1927, upon appropriate notice to the Commission and to the general public as therein defined.

Thereafter, by order dated March 7, 1927, the proceeding was reopened for further hearing solely in respect to interstate rates to and from points in Florida. Further hearings were thereupon held, and thereafter under date of March 5, 1928, the Commission issued its report and order [fol. 281-6] on further hearing, wherein there were prescribed for interstate application between points in the state of Georgia and points in Florida south of the Seaboard Air Line Railway from Jacksonville to River Junction rates which shall not exceed those based on the scales set forth in Table A of the original report herein (122 I. C. C. 133), applied to the entire distance plus arbitraries determined by the scale set forth in Appendix B to said supplemental report for that part of the haul south of the line of the Seaboard Air Line Railway from Jacksonville to River Junction, Fla. It was further provided that where the transportation is in whole or in part over either of the so-called respondent short lines, set forth in Appendix C to the report herein, except such as may be under common control and management of a standard line, rates shall not exceed those prescribed plus an arbitrary not in excess of 25 cents per ton of 2,000 pounds, such arbitrary to accrue solely to the short line. The rates prescribed in said order on further hearing were required to be established on or before July 2, 1928.

IV

Petitioners state that rates arrived at upon basis of the distance scales prescribed and ordered in the said orders of this Commission, dated January 21, 1927, and March 5, 1928, respectively, have been made effective by all carriers respondents herein for interstate application over their [fol. 281-7] respective lines between all points in the state of Georgia, on the one hand, and all points in other states in Southern territory, including Florida, on the other, and the said interstate rates so prescribed by this Commission have since been continued in effect and are now in effect.

V

In the report dated January 21, 1927, the Commission described and set forth such changes in rates, both intrastate within Georgia and interstate to Georgia, as had been brought about by the order of the Georgia Public Service Commission dated February 25, 1925. It was further said in this report:

"Considering the results brought about by this order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any order in No. 17517 for the [fol. 281-8] future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved" (122 I. C. C. p. 169).

Following the issuance of this Commission's report and order, dated January 21, 1927, the Georgia Public Service Commission was petitioned on behalf of all railroads operating in the state of Georgia to authorize the establishment for intrastate application within said state of the same distance scales that had been approved and prescribed by this Commission for interstate application to and from points in the state of Georgia. Hearings were thereafter held before the Georgia Public Service Commission and thereafter, under date of March 13, 1928, that Commission made and promulgated an order directing the establishment, effective on and after May 1, 1928, of revised scales of rates for intrastate application within the

state of Georgia. A true copy of said order is attached hereto and made a part hereof marked Exhibit A.

VI

Petitioners aver that by the aforesaid order dated March 13, 1928, the Georgia Public Service Commission has not authorized such revisions as are necessary to bring the [fol. 281-9] intrastate rates within that state into harmony with the interstate adjustment approved and ordered by this Commission. On the contrary, the rates prescribed under said order of the Georgia Public Service Commission, to become effective May 1, 1928, for intrastate application in Georgia, are in many instances widely at variance with, and lower than, the rates for like distances as prescribed by this Commission and now in effect for interstate application, as will be illustrated by the following table:

[fol. 281-10] Statement Showing Trunk Line Scales Prescribed by the I. C. C. in Docket 17517 and by the Georgia Public Service Commission in Its Order of March 13th, 1928, on Sand, Gravel, Crushed Stone, Slag, and Other Roadway Building Materials

In Cents per Ton, 2,000 Pounds

	Single line			Joint line		
Miles	I. C. C. Docket 17517	G. P. S. C. Order 3-13-28	Differences	I. C. C. Docket 17517	G. P. S. C. Order 3-13-28	Differences
10	50	50	....	65	50	—15
20	55	55	....	70	55	—15
30	60	60	....	75	60	—15
40	70	70	....	85	70	—15
50	80	70	—10	95	70	—25
60	80	80	....	95	80	—15
70	90	80	—10	105	80	—25
80	90	90	....	105	90	—15
90	100	90	—10	115	90	—25
100	100	100	....	115	100	—15
110	110	100	—10	125	100	—25
125	110	110	....	125	110	—15
130	120	110	—10	135	110	—25
150	120	120	....	135	120	—15

Miles	Single line			Joint line		
	I. C. C. Docket 17517	G. P. S. C. Order 3-13-28	Differences	I. C. C. Docket 17517	G. P. S. C. Order 3-13-28	Differences
160	130	120	—10	140	120	—20
175	130	130	....	140	130	—10
190	135	130	— 5	145	130	—15
200	135	140	+ 5	145	140	— 5
220	140	140	....	150	140	—10
230	140	150	+10	150	150	....
250	150	150	....	160	150	—10
260	150	160	+10	160	160	....
280	160	160	....	170	160	—10
290	160	170	+10	170	170	....
320	165	170	+ 5	175	170	— 5
360	175	180	+ 5	180	180	....
400	180	190	+10	185	190	+ 5
440	195	200	+ 5	200	200	....
460	205	210	+ 5	210	210	....

[fol. 281-11] It will be observed from this table that for single line hauls over trunk lines the Georgia Commission's scale is lower in many instances than the Docket No. 17517 interstate scale for distances up to 200 miles; whereas for distances 200 miles and over the Georgia Commission's scale is generally slightly higher than the interstate scale. For joint-line hauls over trunk lines the prescribed Georgia scale is on a very substantially lower general level than the prescribed interstate rates for joint hauls.

For all distances, both single and joint hauls, over short lines and for all distances, for joint hauls between trunk lines and short hauls, the rates prescribed by the Georgia Commission are lower than the interstate rates for like movements under the Docket No. 17517 scales.

As further illustrative of the differences between the intrastate rates from representative shipping points in Georgia, on the one hand, as contrasted with the interstate rates into Georgia from representative shipping points in other states, on the other, there are attached hereto and made a

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— Georgia Public Service Commission Scale lower than 17517 Scale.

+ Georgia Public Service Commission Scale higher than 17517 Scale.

part hereof marked Exhibits B, C, D and E, respectively, tables comparing the rates prescribed by the Georgia Commission from such shipping points as Norris, Lithonia, Howard, Junction City and Elberton, Ga., with the interstate rates applicable to points in Georgia from such representative shipping points in other states as Columbia and Steel Creek, S. C., Montgomery and Jacksons Lake, Ala., and Knoxville and Chattanooga, Tenn.

[fol. 281-12] Petitioners state that the foregoing examples are intended merely to be illustrative, and in this connection they ask reference to the report of January 21, 1927 herein (122 I. C. C. at page 137) wherein are set forth numerous points of production in Georgia, and wherein reference is made also to the large movement of these commodities into Georgia from points in other states in competition with the Georgia producers.

VII

Petitioners aver that, as stated in the said report of January 21, 1927, there are no transportation reasons for the maintenance of a different basis of intrastate rates on these commodities within Georgia from that found reasonable by this Commission for interstate transportation. Petitioners further call attention to the fact that throughout said report it appears that in determining and arriving at the level of the rates prescribed for interstate application, this Commission had before it and considered the then prevailing intrastate rates in Georgia, the volume and extent of the movement under these rates, as well as the interstate rates, and the general effect upon the revenues of the respondent carriers if the prescribed scales should be adopted alike on interstate and intrastate traffic in Georgia. From the language of the report petitioners further understand that in adopting the prescribed interstate scales it was the expecta-
[fol. 281-13] tion of the Commission that these scales would be made applicable upon the intrastate traffic in Georgia, as well as upon the interstate traffic moving from, to or through said state.

VIII

Petitioners aver that the establishment of the rates ordered by the Georgia Public Service Commission, by its

order dated March 13, 1928, which rates petitioners are compelled to make effective not later than May 1, 1928, will not accomplish the intent and purpose of their original petition upon basis of which this Commission issued its order of investigation herein, or of said order of investigation, or of this Commission's reports and orders dated January 21, 1927, and March 5, 1928. Petitioners expressly aver, on the contrary, that the establishment of the said rates prescribed by the Georgia Public Service Commission causes and will continue to cause an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Georgia, on the one hand, and interstate and foreign commerce, on the other hand, and an undue, unreasonable and unjust discrimination against interstate and foreign commerce, and an undue burden upon such interstate and foreign commerce (arising particularly by reason of the failure of carriers operating in Georgia to earn upon this traffic in intrastate movement the revenues to which they are rightfully entitled) all of which is in violation of the Interstate Com- [fol. 281-14] merce Act, as amended, particularly sections 3 and 13 of said Act.

Wherefore petitioners pray that this proceeding may be reopened and a further investigation held by this Commission with reference particularly to the rates prescribed by the Georgia Public Service Commission in its order dated March 13, 1928, and that after such further hearing or hearings as this Commission may direct an order be entered herein by this Commission declaring the rates so ordered by the Georgia Public Service Commission to be unlawful, and to cause an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate and foreign commerce, on the other, and an undue, unreasonable and unjust discrimination against and burden upon said interstate and foreign commerce, and that there be taken in the premises all such further proceedings and that there be entered all such further order or orders as may be necessary to remove such advantage, preference, prejudice or discrimination as set forth in this petition, and as

may be shown as the result of such further investigation as may be ordered by the Commission.

Respectfully submitted.

Edward D. Mohr, H. L. Walker, Frank W. Gwathmey, Attorneys for Petitioners.

April 12, 1928.

[fol. 281-15] EXHIBIT A

GEORGIA PUBLIC SERVICE COMMISSION, ATLANTA

File 16384

March 13th, 1928.

Petition—Charles Barham, Chairman, Representing all Carriers Members Southern Freight Association and Petition—Southern Railway for Revision of Rates on Chert, Sand, Gravel, Slag, and Crushed Stone Between Points in Georgia

By order, dated February 25th, 1925, effective April 1st, 1925, the Commission approved the general revision of all rates on chert, gravel, sand, stone, etc., between points in Georgia, Section 5 of this Order making the following provision:

"Ordered further: (5) All carriers are authorized to cancel all class and commodity rates that are lower than the commodity rate schedules and classification ratings provided in this Order and observe as a maximum the commodity rate schedules and classification ratings authorized herein, except that in no instance shall the rates on the commodities covered by this Order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul."

[fol. 281-16] The effect of the above stated Order was to increase very materially the rates on these materials between points in Georgia where the preponderance of the movement was taking place, and in order for the carriers to take advantage of the increased rates approved, and com-

ply with Section 5, it was necessary that they increase many of the then existing interstate rates from points in other States to points in Georgia. Carriers submitted a petition to the Commission for suspension of the effective date of its Order on the grounds that they did not have sufficient time to make the necessary revision of the interstate rates to bring them in line with the intrastate rates approved, whereupon we suspended the application of Section 5 until August 1st, 1925.

Certain Georgia carriers filed formal complaint with the Interstate Commerce Commission against the Georgia intrastate rates, alleging discrimination under Section 13 of the Interstate Commerce Act, this complaint being followed by complainants from certain shipping interests in Alabama and Tennessee, and as a result the Interstate Commerce Commission by its Order, Docket 17517, et al., required all carriers in Georgia to become parties to the proceeding for the purpose of determining whether or not the Georgia rates caused undue discrimination against interstate commerce. The investigation of the Interstate Commerce Commission resulted in its Order dated January 21st, 1927, 122 I. C. C. 133. The carriers' petition, which we now have before us, is for approval of the rates prescribed by the Interstate Commerce Commission in its Docket 17517, et al., 122 I. C. C. 133. At pages 169 and 170, the Interstate Commerce Commission stated:

[fol. 281-17] "The changes in rates both intrastate within Georgia and interstate to Georgia brought about by the Georgia Commission's Order of February 25, 1925, have been fully discussed. We have been impressed with what appears to us to have been the broad-minded attitude taken by the Georgia Commission when it undertook the revision of these rates which resulted in its Order of February 25, 1925. This order as we have seen resulted in raising many depressed intrastate rates applying between important producing and consuming points, and subsequently had the effect of bringing about substantial increases in important depressed interstate rates. Considering the results brought about by this Order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance

scale of rates for application alike to the interstate transportation of all of the commodities here considered. There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation. However, in view of the attitude taken by the Georgia Commission in the past which we have above adverted to we do not now deem it necessary to make any finding or enter any Order in No. 17517 for the future in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia Commission will cooperate in authorizing such revisions as [fol. 281-18] may be necessary to bring their rates into harmony with the interstate adjustment herein approved."

We are in accord with the views of the Interstate Commerce Commission that the intrastate rates should not cause undue discrimination against interstate commerce, neither should interstate rates result in undue discrimination against intrastate commerce, and with this end in view, it is the purpose of this Commission to prescribe such rates as will permit of free movement and competition both inter and intrastate.

The rates which we prescribed on sand, unwashed gravel and chert, effective April 1st, 1925, were slightly lower than the rates which we approved on washed gravel, crushed stone and slag. However, the rates which were prescribed by the Interstate Commerce Commission in its Docket 17517 provide for the same rates on all these commodities, the general level of the single line rates being approximately the same as the rates which we prescribed on crushed stone, slag and washed gravel. The rates which we prescribed provided for a joint line differential for hauls over two or more lines for distances under 100 miles, whereas the rates prescribed by the Interstate Commerce Commission in Docket 17517 provide for a joint line differential for all distances under 480 miles.

The investigation which we have made shows very keen competition between the producers of all these materials at the principal markets, both inter and intrastate, the producers in Georgia coming in direct competition with the producers in Alabama, Tennessee and South Carolina. In

our opinion, to approve the gradation of the scale prescribed by the Interstate Commerce Commission would [fol. 281-19] work great injury and damage to shippers and carriers on Georgia intrastate traffic, and for that reason we are prescribing a revised scale, in order that all interests may be preserved.

In Southern Class Rate Investigation, 113 I. C. C. 200, Rates on Fertilizers and Fertilizer Material between Points in Southeastern Territory I. C. C. Docket 16295, Southern Cement Rates I. C. C. 15806 and Georgia Peach Growers' Exchange, et al., Docket 16462, the Interstate Commerce Commission did not provide for a differential to be added for joint line movement over two or more lines. It is our opinion that the principles, with regard to joint line rates, as laid down by the Interstate Commere Commission in these cases are entirely proper, and it is our conclusion that this principle would prevail in this case.

Should we approve the joint line differentials for application intrastate in Georgia which have been approved by the Interstate Commerce Commission for interstate application in Docket 17517, it would result in discrimination between the producers of these materials within the State of Georgia, and would place the producers in Georgia at a great disadvantage with their competitors in the States of Alabama and Tennessee, this condition being brought about on account of the location of the producing plants in Georgia, and the necessity for joint line movement to points of consumption that are reached by single line movement from producing points in other States. The rates which we are approving in the following Order, in our opinion, are just and reasonable, and will not be preferential to Georgia producers, or result in undue discrimination [fol. 281-20] against interstate producers. It is, therefore,

Ordered: (1) That effective on and after May 1st, 1928, and until the further Order of this Commission, the rates shown in Appendix A, attached hereto, and made a part of this Order, shall be the maximum rates to be charged by Freight Tariff Class "A" and Freight Tariff Class "B" railroads between points wholly within the State of Georgia, and to be used and applied by each of the railroads operating within the State of Georgia, in the manner and as herein after directed.

Ordered further: (2) That the ratings provided for in this Order shall be applied to all Freight Tariff Class "A" and Freight Tariff Class "B" railroads, as designated in Appendix B, attached hereto, and made a part hereof.

Ordered further: (3) That the Rate Tables, as shown in Appendix A, shall be applied as follows:

Rate Table No. 1. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class "A".

Rate Table No. 2. To joint line application between points within this State, located on two or more of the severally named railroads in Freight Tariff Class "A."

Rate Table No. 3. To joint line application between points located within this State, located on one or more Freight Tariff Class "A" railroads, and one or more Freight Tariff Class "B" railroads. Also between points located on one or more Freight Tariff Class "A" railroads, when the short line distance is constructed in connection with a Freight Tariff Class "B" railroad, and the rate is lower than provided for in the application of Rate Table [fol. 281-21] No. 1 or No. 2. Also between points on one or more Freight Tariff Class "B" railroads, when the short line distance is constructed in connection with a Freight Tariff Class "A" railroad, and the rate is lower than provided for in the application of Rate Tables No. 4 or No. 5.

Rate Table No. 4. To single line application between points within this State, on each of the severally named railroads in Freight Tariff Class "B."

Rate Table No. 5. To joint line application between points within this State, located on one or more of the severally named railroads in Freight Tariff Class "B."

Ordered further: (4) That on or before the effective date of this Order, all class and commodity rates between points within this State that are higher than the rate schedules and classification ratings provided for in this Order shall be cancelled, and the rate schedules and classification ratings provided in this Order be observed as a maximum.

Ordered further: (5) All carriers are authorized to cancel all rates on the commodities herein provided for that are lower than the rate schedules and classification ratings

provided in this Order and observe as a maximum the rate schedules and classification ratings authorized herein except that in no instance shall the rates on the commodities covered by this Order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul.

[fol. 281-22] Ordered further: (6) The Commission's Freight Rule No. 27 is hereby suspended, and superseded by Rate Tables 2, 3 and 5, in constructing joint line rates on the commodities covered by this Order.

Ordered further: (7)

(1) Joint rates between Freight Tariff Class "A" railroads, shall be divided on percentages arrived at by using the local rate of each line to and from the Junction or transfer point as factors:

(2) Joint rates between Freight Tariff Class "A" and Freight Tariff Class "B" railroads shall be divided by allowing the Freight Tariff Class "A" railroad the same revenue or proportion of the joint rate as it would receive in connection with a Freight Tariff Class "A" road, the remainder of the joint rate to accrue to the Freight Tariff Class "B" road or roads; Except, that where the joint rate is made by use of the Freight Tariff Class "B" Scale and traffic is handled jointly by Freight Tariff Class "A" and Freight Tariff Class "B" roads, the Freight Tariff Class "B" road shall receive the same revenue or proportion of the joint rate as if the traffic had been handled jointly by Freight Tariff Class "B" roads, the remainder of the jont rate to accrue to the Freight Tariff Class "A" road or roads.

(3) Joint rates between Freight Tariff Class "B" roads shall be divided in the same manner as provided for Freight Tariff Class "A" roads.

(4) The basis for the division of rates provided for herein is not intended to prevent carriers from agreeing

among themselves to the division of joint rates on any [fol. 281-23] other basis that may be satisfactory to all parties concerned.

Ordered further: (8) That when, by the use of the schedules of rates authorized in this Order, rates are established between competitive points by a carrier or carriers, whose lines form the lowest rate making route, the carrier or carriers forming the longer distance, or higher rate making route, are permitted to meet such competition, and to charge higher rates at intermediate points, but in no instance shall rates be charged higher than for the single or joint line scale of rates authorized herein, for the actual distance, via the route making the lowest rate to, from, or between such intermediate points. In instances where the carriers establish between any points lower rates than authorized herein, no higher rates shall be charged at any intermediate point, without the approval of the Commission having first been obtained.

By order of the Georgia Public Service Commission.
(Signed) Robt. N. Springfield, Secretary. James A. Perry, Chairman.

[fol. 281-24] Commodity Group No. 22 A

Maximum rates to be applied on chert gravel (sand or clay gravel, washed or unwashed), sand, slag (granulated, lump or pulverized in packages or in bulk), crushed stone, broken stone, rubble stone, stone screenings, stone flagging, carload, minimum weight to be charged for 80,000 pounds, excess in proportion, except where a car of less than 80,000 pounds' capacity is furnished the marked capacity of the car shall be charged for.

(Rates in Centers per Ton 2,000 Pounds)

Rate tables, Distances	1 & 2	3	4 & 5
5 Miles and Under	50	60	60
10 Miles and Over 5	50	60	60
15 Miles and Over 10	55	65	65
20 Miles and Over 15	55	65	65
25 Miles and Over 20	60	70	70
30 Miles and Over 25	60	70	70
35 Miles and Over 30	70	80	80

Rate tables, Distances	1 & 2	3	4 & 5
40 Miles and Over 35	70	80	80
45 Miles and Over 40	70	80	80
50 Miles and Over 45	70	80	80
55 Miles and Over 50	80	90	90
60 Miles and Over 55	80	90	90
65 Miles and Over 60	80	90	90
70 Miles and Over 65	80	90	90
75 Miles and Over 70	90	100	100
80 Miles and Over 75	90	100	100
85 Miles and Over 80	90	100	100
90 Miles and Over 85	90	100	100
95 Miles and Over 90	100	110	110
100 Miles and Over 95	100	110	110
110 Miles and Over 100	100	110	110
120 Miles and Over 110	110	120	120
130 Miles and Over 120	110	120	120
140 Miles and Over 130	120	130	130
150 Miles and Over 140	120	130	130
160 Miles and Over 150	120	130	130
170 Miles and Over 160	130	140	140
180 Miles and Over 170	130	140	140
190 Miles and Over 180	130	140	140
200 Miles and Over 190	140	150	150
210 Miles and Over 200	140	150	150
220 Miles and Over 210	140	150	150
230 Miles and Over 220	150	160	160
240 Miles and Over 230	150	160	160
250 Miles and Over 240	150	160	160
260 Miles and Over 250	160	170	170
270 Miles and Over 260	160	170	170
280 Miles and Over 270	160	170	170
290 Miles and Over 280	170	180	180
300 Miles and Over 290	170	180	180
320 Miles and Over 300	170	180	180
340 Miles and Over 320	180	190	190
360 Miles and Over 340	180	190	190
380 Miles and Over 360	190	200	200
400 Miles and Over 380	190	200	200
420 Miles and Over 400	200	210	210
440 Miles and Over 420	200	210	210
460 Miles and Over 440	210	220	220

[fol. 281-25] APPENDIX B

Classification of Railroads

Freight Tariff Class "A" Railroads:

The Alabama Great Southern R. R. Co.
Atlanta, Birmingham & Coast R. R. Co.
Atlantic Coast Line R. R. Co.
Atlanta & West Point R. R. Co.
Central of Georgia Rwy. Co.
Charleston & Western Carolina Rwy. Co.
Georgia Railroad.
Georgia, Southern & Florida Rwy. Co.
Lexington Terminal R. R. Co.
Louisville & Nashville R. R. Co.
Monroe Railroad Co.
Nashville, Chattanooga & St. Louis Rwy.
Seaboard Air Line Rwy. Co.
Southern Railway Co.

Freight Tariff Class "B" Railroads:

Bowdon Railway Company.
Collins & Glennville Railroad Co.
Elberton & Eastern Railroad Co.
Flint River & Northeastern R. R. Co.
Gainesville Midland Railway.
Gainesville & Northwestern Railroad Co. (G. A. Austin and Sidney Smith, Receivers.)
Georgia and Florida Railroad.
Georgia, Ashburn, Sylvester & Camilla Ry. Co.
Georgia, Florida & Alabama Railway Company.
Georgia Northern Railway Company.
Georgia, Southwestern & Gulf R. R.
Greene County Railroad Company.
[fol. 281-26] Hartwell Railway Company.
Lakeland Railway.
Louisville & Wadley Railroad Co.
Macon, Dublin & Savannah R. R. Co.
Milltown Air Line Rwy.
Millstead Railway.
St. Mary's Railroad.
Sandersville R. R. Co.

Savannah and Atlanta Railway (Charles E. Gay, Jr., Receiver).
Savannah and Statesboro Railway Co.
Shearwood Railway Company.
Smithonia and Dunlap R. R.
South Georgia Railway.
Statesboro Northern Railway.
Sylvania Central Railway Company.
Talbotton Railroad Company.
Tallulah Falls Railway Company (J. F. Gray, Receiver).
Tennessee, Alabama and Georgia R. R.
Union Point and White Plains R. R. Co.
Wadley Southern Railway Company.
Washington & Lincolnton R. R. Co.
Waycross and Southern R. R. Co.
Wrightsville & Tennille R. R. Co.

Exhibit B

Statement showing distances and rates on crushed stone, sand, and gravel, in effect on dates shown in notes below, from Norris, Ga., to representative destinations in Georgia compared with rates which would result from scales prescribed in Docket 17517 and with rates from Columbia, S. C., Steel Creek, S. C., and Montgomery, Ala.

Rates in Cents per Ton 2,000 Pounds

	From												
	Norris, Ga.					Columbia, S. C.		Steel Creek, S. C.			Montgomery, Ala.		
To—	Miles (joint)	A	B	C	D	Miles (joint)	E	Miles (joint)	F	E	Miles	F	E
Jesup, Ga.	220	167	130	140	150	200	145	151	140	140	S–355	180	170
Blackshear, Ga.	250	....	140	150	160	230	150	181	144	145	J–271	....	170
Waycross, Ga.	245	176	140	150	160	240	160	191	149	145	S–315	171	165
Ousley, Ga.	233	....	140	150	160	309	175	260	162	160	S–245	158	150
Quitman, Ga.	241	176	140	150	160	317	175	268	167	170	S–238	153	150
Boston, Ga.	249	176	140	150	160	331	180	282	167	170	S–223	153	140
Bainbridge, Ga.	272	176	150	160	170	379	190	330	....	180	S–175	140	130
Willacoochee, Ga.	206	167	130	140	150	282	170	211	158	150	J–219	176	150
Brookfield, Ga.	185	....	120	130	145	303	175	232	162	160	J–197	....	145
Tifton, Ga.	177	158	120	130	145	311	175	240	167	160	J–190	167	145

Ty Ty, Ga	186	....	120	130	145	320	175	249	171	160	J–182	....	145
Sylvester, Ga	196	162	130	140	145	332	180	261	171	170	J–169	167	140
Albany, Ga	179	158	120	130	145	315	175	266	176	170	S–159	....	130
Camilla, Ga	204	167	130	140	150	341	180	291	....	175	J–174	158	140
Pelham, Ga	213	167	130	140	150	349	180	300	....	175	J–183	153	145

A—Rates in effect prior to April 1st, 1925.

B—Rates established April 1st, 1925. Apply on sand and unwashed gravel; washed gravel and crushed stone 10 cents per net ton higher.

C—Georgia Public Service Commission's Order of March 13th, 1928, effective May 1st, 1928.

D—Rates which would apply on basis of scale prescribed in I. C. C. Docket, 17517.

E—Rates established as result of order in Docket 17517, effective October 1st, 1927.

F—Rates in effect prior to October 1st, 1927.

S—Single Line.

J—Joint Haul.

Tariff Authorities:

Ga. R. R. I. C. C. No. A 43.
C. & W. C. Ry., I. C. C. No. A 829.
Agent J. H. Glenn's I. C. C. Nos. A 494, A 529 and A 655.

[281-28] EXHIBIT C

Statement showing distances and rates on crushed stone, sand, and gravel from Lithonia, Ga., to representative destinations in Georgia compared with rates which would result from scales prescribed in Docket 17517 and with rates from Columbia, S. C., Jacksons Lake, and Montgomery, Ala.

Rates in Cents per Ton 2,000 Pounds

	From									
	Lithonia, Ga.				Columbia, S. C.		Jacksons Lake, Ala.		Montgomery, Ala.	
To	Miles (joint)	A	B	C	Miles	D	Miles (joint)	D	Miles (single)	D
Columbus, Ga...	140	110	120	135	J-308	175	98	115	95	100
Richland, Ga....	180	120	130	145	J-308	175	115	125	110	110
Americus, Ga...	165	120	130	140	J-278	170	143	135	138	120
Cordele, Ga.....	160	110	120	140	S-306	165	174	140	169	130
Helena, Ga.....	171	120	130	140	S-252	150	228	150	223	140
Vidalia, Ga.....	206	130	140	150	S-217	140	263	170	258	150
Claxton, Ga.....	237	140	150	160	S-186	135	294	175	289	160

A—Rates established April 1, 1925. Apply on sand and unwashed gravel; washed gravel and crushed stone 10 cents per net ton higher.

B—Georgia Public Service Commission's Order of March 12, 1928, effective May 1, 1928.

C—Rates which would apply on basis of scale prescribed in I. C. C. Docket 17517.

D—Rates established as result of order in Docket 17517, effective Oct. 1, 1927.

S—Single line.

J—Joint haul.

Tariff Authorities: Agent J. H. Glenn's I. C. C. Nos. A 529 and A 655.

Atlanta, Ga., April 10, 1928.

[Docket 281-29]

EXHIBIT D

Statement showing distances and rates on crushed stone, sand, and gravel from Howard, Ga., to representative destinations in Georgia, compared with rates which would result from scales prescribed in Docket 17517 and with rates from Steel Creek and Columbia, S. C.

Rates in Cents Per Ton of 2,000 Pounds

	From							
	Howard, Ga				Steel Creek, Ga.		Columbia, S. C.	
To	Miles	A	B	C	Miles	D	Miles	D
Augusta, Ga.	J-182	120	130	145	S- 84	70	S- 83	100
Grovetown, Ga.	J-170	120	130	140	J- 49	95	J- 98	115
Thomson, Ga.	J-148	110	120	135	J- 71	105	J-120	125
Camak, Ga.	J-130	110	120	135	J- 81	115	J-130	135
Warrenton, Ga.	J-138	110	120	135	J- 84	115	J-133	135
Culverton, Ga.	J-120	100	110	125	J- 90	115	J-148	135
Sparta, Ga.	J-115	100	110	125	J-104	125	J-153	140
Haddock, Ga.	J- 81	100	90	115	J-130	135	J-188	145

A—Rates established April 1, 1925. Apply on sand and unwashed gravel; washed gravel and crushed stone 10 cents per net ton higher.

B—Ga. Public Service Com's order of March 13, 1928, effective May 1, 1928.

C—Rates which would apply on basis of scale prescribed in Docket 17517.

D—Rates established as result of order in Docket 17517, effective Oct. 1, 1927.

S—Single line.

J—Joint haul.

Tariff Authorities: Agent J. M. Glenn's I. C. C. Nos. A-529 and A-655.

Exhibit E

Statement showing distances and rates on crushed stone, sand, and gravel from Junction City and Elberton, Ga., to representative destinations in Georgia compared with rates which would result from scales prescribed in Docket 17517 and with rates from Knoxville and Chattanooga, Tenn.

Rates in Cents per Ton 2,000 Pounds

	From											
	Junction City, Ga.				Elberton, Ga.				Knoxville, Tenn.		Chattanooga, Tenn.	
To	Miles (joint)	A	B	C	Miles (joint)	A	B	C	Miles	D	Miles	D
Crandell, Ga	201	130	140	150	134	110	120	135	S-96	100	J-107	125
Chattsworth, Ga	193	130	140	145	126	100	110	135	S-104	110	J-115	125
Fairmount, Ga	169	120	130	140	102	100	100	125	S-128	120	J-109	125
Cartersville, Ga	149	110	120	135	82	100	90	115	S-148	120	S- 89	100
Acworth, Ga	136	110	120	135	69	90	80	105	J-161	140	S-102	110
Marietta, Ga	122	100	110	125	55	80	80	95	S-175	130	S-115	110
Blue Ridge, Ga	205	130	140	150	138	110	120	135	S-120	110	J-131	135
Ellijay, Ga	189	120	130	145	122	100	110	125	S-136	120	J-147	135
Jasper, Ga	169	120	130	140	102	100	100	125	S-156	130	J-163	140
Tate, Ga	164	120	130	140	97	100	100	115	S-161	130	J-158	140

Canton, Ga.	146	110	120	135	79	90	90	105	S-179	135	J-140	135
Woodstock, Ga	134	110	120	135	67	90	80	105	S-187	135	J-128	135

A—Rates established April 1st, 1925. Apply on sand and unwashed gravel; washed gravel and crushed stone 10 cents per net ton higher.

B—Georgia Public Service Commission's order of March 13, 1928, effective May 1, 1928.

C—Rates which would apply on Basis of Scale prescribed in Docket 17517.

D—Rates established as result of order in Docket 17517, effective October 1, 1927.

S—Single line.

J—Joint haul.

Tariff authorities: Agent J. H. Glenn's I. C. C. Nos. A-529 and A-655.

[fol. 282] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

MOTION FOR GENERAL INVESTIGATION

Come now State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb, and Atlanta Freight Bureau, and move the Commission to institute a general investigation into the rates, charges, and practices of the carriers with relation to the commodities named in the above described proceeding and that such investigation include all of Southern territory; and for cause of this motion respondents say,

That there now exists in the State of Mississippi rates made on different bases but which rates are generally lower than the rates in Georgia; that the carriers maintain rates between the State of Tennessee and the State of Mississippi and from Alabama to those states which are lower than the interstate rates prescribed in the above-styled proceeding and lower than the rates in Georgia; that the situation in Georgia with reference to the proportion of joint line and single line hauls differs from that interstate and differs from that intrastate in other states; that since the institu-[fols. 282½-286] tion of the investigation described in the title hereof some three years have elapsed and in order properly and constitutionally to prescribe rates and rate relationships facts as they exist today should be known.

Wherefore respondents pray that a general investigation be had to the end that justice may be done all states and communities.

Watkins, Asbill & Watkins, Watkins, Asbill & Watkins, Attorneys, 403 Atlanta Trust Company Bldg., Atlanta, Georgia.

[fol. 287] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

REPLY OF ROQUEMORE GRAVEL COMPANY, ALABAMA SAND AND GRAVEL COMPANY, AND THE MONTGOMERY CHAMBER OF COMMERCE TO PETITION OF THE STATE HIGHWAY COMMISSION OF GEORGIA, CITY OF ATLANTA, COUNTIES OF FULTON AND DEKALB, AND THE ATLANTA FREIGHT BUREAU FOR A GENERAL INVESTIGATION, THROUGHOUT SOUTHERN TERRITORY, INTO THE RATES, CHARGES, AND PRACTICES OF THE CARRIERS ON THE COMMODITIES INVOLVED IN THE PROCEEDING

Come now the Roquemore Gravel Company and the Alabama Sand and Gravel Company, corporations engaged in the production and distribution of sand and gravel, with pits located within the industrial switching limits of Montgomery, and who distribute sand and gravel to points in Alabama, Georgia, Florida, South Carolina, Tennessee and Mississippi and have a direct, and not a local, interest in all the rates involved and present this reply to the petition of the State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb and the Atlanta Freight Bureau.

The petitioners say that two or three years have elapsed since the investigation, under this docket, was instituted and facts as they exist today should be known. The rates into Florida, considered along with this docket and made a sub-number thereof, are ordered to become effective July 2nd. If we are to have a general investigation every two or three years into these important aggregate material rates because of the constantly changing decisions of the one state (Georgia) commission there will never be any stability to the rate adjustment and the record might as well be kept open indefinitely. Petitioners are not asking for a reconsideration or re-hearing of the matters involved under this docket but are requesting a new and additional general investigation which could not be properly conducted under the docket and the petition is, therefore, not authorized by

the Commission's Rules of Practice and should be denied for this if for no other reason.

[fol. 288] It is not understood that petitioners are interested in anything more than the rates in Georgia, which rates are now before the Commission in appropriate proceedings and would have been previously disposed of had it not been for the lofty attitude taken by the Georgia Commission in the proceedings before the Commission, accompanied by its critical attitude towards the Alabama Public Service Commission which has since adopted for intrastate application in Alabama the precise scale prescribed by the Interstate Commerce Commission, while the Georgia Commission has declined to follow the same proper course.

The Georgia intrastate rates should have been required, by the Interstate Commerce Commission, to have been put on the interstate level and when this is accomplished as a consequence of the carriers 13th section petition now pending the rates in Georgia, the rates in Alabama and between Alabama and Georgia will be on the scale prescribed by the Commission in what was, as a matter of fact, a general investigation and covered by this docket and related cases.

With all investigations now before the Commission, as well as those in contemplation, we have no fear that the Commission will institute another general investigation into the rates on these aggregate materials before a year has lapsed since the new rates became effective as a result of its general investigation. The general investigation that was had into these rates, while consuming considerable time on the part of the Commission and practically every shipper of aggregate materials in Southern Territory on a most complete record, the time consumed was relatively less than that ordinarily required in general investigations of rates on such important moving commodities. To undertake another general investigation on these same articles at this time, when intrastate rates are being brought into line with those prescribed by the Interstate Commerce Commission, would be to undo all that has been accomplished in making effective throughout Southern Territory interstate and intrastate, reasonable and non-discriminatory rates on these materials. The industry is becoming adjusted to these new rates and new plants are being built, at points in South Alabama, predicated thereon involving an outlay of capital of as much as $150,000.00 each.

These interests in whom this reply is made have already been through a general investigation of the rates on the material in question. It is true that the Commission did not issue an order directing that the intrastate rates in [fol. 289] Georgia and Mississippi be put on the interstate level which it has prescribed in formal complaints brought by these interests, but the failure of the Commission to issue such orders was over protest of the complainants and has resulted, and continues to result, to their injury. This litigation has already been very expensive to complainants and it is respectfully submitted that this mere strategic move of petitioners for another general investigation, for the purpose of keeping the intrastate rates in Georgia from coming up to the level prescribed by the Commission for interstate application, should be forthwith dismissed by the Commission.

Petitioners predicate their entire claim for another general investigation of these rates upon the allegation that the rates in Mississippi are lower than in Georgia and that there are some rates between points (principally via the Illinois Central) in Tennessee and points in Mississippi and from some points in Alabama to points in Tennessee and Mississippi which are lower than the interstate rates prescribed by the Commission. How the fact that these few rates have not been properly brought into line with the interstate scale of the Commission justifies another general investigation is not set forth. If what movants want is that these rates be brought up to the interstate level they should first show their interest in such rates and then file an appropriate complaint against them. If such a complaint is filed we will join enthusiastically in support thereof.

The rates prescribed by the Commission in this docket have been made effective on intrastate traffic in the following southern states: Alabama, Tennessee, Kentucky, North Carolina and South Carolina. These rates have also been made effective on intrastate traffic in Florida over the L. & N. R. R. Co. and intrastate in Virginia over the L. & N. R. R. Co.

These rates apply interstate throughout Southern Territory except in connection with certain lines operating between Tennessee and Mississippi, principally in connection with the Illinois Central System and certain affiliated lines.

These rates will apply, with differentials, from all Southern points to all points in Florida effective July 2nd.

The scale referred to applies all over the South today intrastate and interstate except between points in Georgia and between points in Mississippi intrastate and in connection with some movements over the Illinois Central and affiliated lines.

[fol. 290] The fact that the Georgia intrastate rates differ from the interstate rates is something we have long complained about and we hope it will be corrected when the Commission disposes of the pending 13th section complaints of the Georgia carriers. No general investigation is necessary for this purpose as practically all other rates, inter and intrastate, in the Southern Territory have now been revised to the basis prescribed by the Commission, except intrastate in Georgia and Mississippi and we complained about these rates under this docket.

Respectfully submitted.

Roquemore Gravel Company, Alabama Sand & Gravel Company, Montgomery Chamber of Commerce, by M. M. Caskie, Chamber of Commerce Building, Montgomery, Alabama.

Dated at Montgomery, Alabama, June 1st, 1928.

[fol. 291] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

No. 17763

ROQUEMORE GRAVEL COMPANY et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

ORDER REOPENING CAUSES—June 4, 1928

It appearing, That under date of January 21, 1927, the Commission issued a report and order in the above-entitled

proceedings and in No. 17517 prescribed a reasonable basis of rates and minimum weights for the interstate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in the State of Georgia, and between points in the State of Georgia and points in other states in Southern territory, except Florida, and that the said reasonable basis of rates and minimum weights was also prescribed in No. 17763 for the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia;

It further appearing, That in said report the Commission stated it did not deem it necessary to make any findings or enter any order in No. 17517 in so far as unjust discrimination against interstate commerce was there involved, as it was felt that the Georgia Public Service Commission would cooperate in authorizing such revision in the intrastate rates within Georgia as might be necessary to bring such rates into harmony with the interstate adjustment prescribed as aforesaid;

It further appearing, That a petition has now been filed on behalf of carriers respondent in No. 17517, operating in the State of Georgia, in which it is averred that the Georgia Public Service Commission by order promulgated on the 13th day of March, 1928, effective the 1st day of May, 1928, required petitioners to establish rates on the aforesaid commodities within said State of Georgia which are not in harmony with, but are in many instances widely at variance with, and less than, the rates required to be established by this Commission for interstate traffic, and that said petitioners pray that this proceeding be reopened for further investigation;

It is ordered, That No. 17517 be, and it is hereby, reopened for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Commission to be maintained by said respondent railroads on intrastate shipments of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in relation to the interstate rates and minimum weights prescribed as aforesaid causes, or will cause, any undue or unreasonable advantage, preference, or preju-

dice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

[fol. 292] It is further ordered, That No. 17763 be reopened solely on the issue as to whether the intrastate rates and minimum weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, in shipping sand, gravel (washed or unwashed) and clay gravel from Montgomery, Ala., and Chattanooga, Tenn., to destinations in the State of Georgia.

It is further ordered, (1) That the State of Georgia be notified of these proceedings by sending copies of this order and of said petition, by registered mail, addressed to the Governor of the State of Georgia, at Atlanta, Ga., and to the Georgia Public Service Commission, at Atlanta, Ga.

(2) That notice of these proceedings be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

(3) That these proceedings be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 293] Before Interstate Commerce Commission

Docket 17517 et al.

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

Reply of the Alabama Public Service Commission to Motion of the State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb, and Atlanta Freight Bureau for a General Investigation of Rates on Said Commodities Throughout Southern Territory

Comes now the Alabama Public Service Commission, a party to the above-entitled proceeding, and submits this

reply to the motion of the State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb, and Atlanta Freight Bureau, seeking a general investigation of the rates on chert, clay, sand and gravel throughout southern territory.

I

While the request of the aforementioned parties for a general investigation is submitted in the form of a motion, it is in reality an application for rehearing of the proceeding consolidated under Docket 17517, and it should be so treated. In such applications the Commission's Rules of Practice require that the grounds for rehearing be set out fully and explicitly and that they must not be merely sumulative.

[fol. 294]

II

The only grounds upon which movants predicate their request are:

1. That rates in the state of Mississippi are generally lower than those in the state of Georgia.

2. That certain rates are maintained by the carriers between points in the state of Tennessee and points in the state of Mississippi, and from points in Alabama to points in those states, on a lower basis than the scales prescribed by the Commission in the above-entitled proceeding, and on a lower basis than the rates in the state of Georgia.

3. That the situation in Georgia with reference to the proportion of joint-line to single-line hauls differs from the situation on interstate traffic and from the situations in other states.

4. That some three years have elapsed since the institution of the investigation by the Commission under the above-entitled proceeding and that a new investigation is necessary to obtain the facts as they exist today.

III

The record before the Commission showed all of the things alleged as the basis for a new investigation in the motion in question. Another investigation would simply

[fol. 295] have to travel over the same ground as the former. The facts in the former record showed clearly that in some sections of southern territory the proportion of joint-line hauls to single-line hauls is somewhat greater than in other sections, but all of that evidence was considered by the Commission. Nothing new could be developed. The outstanding fact was and undoubtedly is that the predominant movement in southern territory as a whole is single-line. It is a fact that in some of the states, including Georgia and Mississippi, the intrastate rates have not been brought up to the level of the interstate scales. It is also true that some of the interstate rates have not been revised. But, obviously, the proper way to cure these situations is by a proceeding limited only to them. A general investigation would upset the constructive work which has been accomplished in the major portion of this territory. The intrastate rates in Alabama, Kentucky, North Carolina, South Carolina and Tennessee have been brought into harmony with the interstate scales prescribed by the Commission in the proceeding under Docket 17517, et al. In addition thereto, the majority of the interstate rates in the Southeast have been revised upon that basis, or shortly will be so revised. We submit, therefore, that no sufficient reasons have been shown why a general investigation of the [fol. 295-a] rates on chert, clay, sand and gravel in southern territory should be instituted, and we trust the Commission will not undertake to do so.

Dated at Montgomery, Alabama, June 2, 1928.

Respectfully submitted.

Alabama Public Service Commission, by Hugh White, Hugh White, President; J. H. Alldredge, J. H. Alldredge, Chief Transportation Bureau.

[fol. 296] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

MOTION FOR ORDER DIRECTING DEFENDANTS TO FURNISH CERTAIN INFORMATION

Now comes the Georgia Public Service Commission, by its undersigned attorney, and respectfully requests the In-

terstate Commerce Commission to direct defendants, Atlanta & West Point Railroad Company, and Western Railway of Alabama, and each and every other railroad company participating in the transportation of sand and gravel from Montgomery, Alabama, to Atlanta, Georgia, to furnish the following information:

1. The number of carloads and tonnage of sand and gravel transported during a representative time, not less than three months, in the year 1928, from Montgomery, Alabama, (including points adjacent to Montgomery taking the same rate,) to Atlanta, Georgia.

2. The total freight charges collected or accrued on said traffic for said period and the rate or rates in cents per net ton or per 100 pounds upon which based.

Your petitioner further requests that said information, when furnished, shall be incorporated in the record of evidence in the above entitled case.

[fol. 297] In support of this request, attention is respectfully called to the fact that the evidence taken at the hearing herein, before Examiner E. H. Waters, on November 26, 27, and 28, 1928, shows that the rate of the defendants from Montgomery to Atlanta is not the full rate that would result from applying the maximum scale set forth in the Commission's decision heretofore entered in No. 17517 to the mileage from Montgomery to Atlanta, computed according to the formula in the said decision.

Attention is further directed to the fact that defendants are claiming that on certain sand, gravel, and crushed stone traffic, intrastate within the State of Georgia, the failure to charge the full amount of rates that would be produced by application of the maximum scale set forth in the said decision in No. 17517 against the actual mileage, results in a substantial depletion of the railroad revenues.

Request for this data was made at the hearing (record 1885). The defendants refused to furnish it taking the ground that it was or might be an unlawful disclosure of information respecting the business of their patrons. However, in the course of said hearing, the same defendants had filed exhibits, without the consent of the shippers involved, setting forth exact information of the tonnage of single individual shippers from particular quarries or pits

to specific destinations. There are many producers at [fol. 298] Montgomery and many consumers at Atlanta. The giving of the total tonnage of all shippers from Montgomery to all consignees at Atlanta would not, therefore, disclose any information of the traffic of a particular concern.

Dated at Chicago, this 17th day of December, 1928.

Respectfully submitted.

John S. Burchmore, Attorney for Georgia Public Service Commission. Walter, Burchmore & Belnap, of Counsel, 1522 First National Bank Bldg., Chicago, Ill.

[fol. 299] BEFORE INTERSTATE COMMERCE COMMISSION

Docket 17517

In re Rates on Chart, Clay, Sand, & Gravel

OBJECTIONS TO AND PROTEST AGAINST REQUEST OF THE GEORGIA PUBLIC SERVICE COMMISSION THAT THE RESPONDENT RAILROADS BE REQUIRED TO FURNISH AS EVIDENCE OF RECORD INFORMATION DESCRIBED IN THE MOTION DATED DECEMBER 17, 1928

Come now the Roquemore Gravel Company and the Alabama Sand and Gravel Company, corporations engaged in business in the City of Montgomery, State of Alabama, and parties to the above entitled proceedings, respectfully showing unto the Commission as follows:

1. Substantially all the tonnage of sand and gravel shipped from Montgomery to Atlanta, Georgia, in the year 1928 by railroads was shipped by these companies which are affiliated with each other by stock interests.

2. For the respondent railways to disclose to the public and competitors of these protestants who are parties to the proceedings information as to the tonnage of such shipments during all or any part of the year 1928 from Montgomery to Atlanta would be to disclose "information which may be used to the detriment or prejudice" of such shippers, "or which may improperly disclose their business

transactions to a competitor" in violation of paragraph 11, Section 15 of the Interstate Commerce Act; and on such grounds these shippers respectfully refuse their consent to the respondent carriers supplying such information.

3. The prohibition of such statutory enactment is absolute in all instances other than those provided for by way of exceptions. But information of the character forbidden may not be required in response to any process which might be used by this Commission since it is neither a State nor a [fol. 390] Federal court; the information is not purposed to be given to any officer or agent of the government for his own use in the exercise of his own powers and to be kept within the confidence thereof; nor is such information sought for the prosecution of any person charged with or suspected of crime. Therefore none of the exceptions provided in such statute is available to enable the lawful requirement that the respondent railroads furnish the requested information.

4. Such information would in any event be legally irrelevant and immaterial to the questions involved in the proceeding. If interstate commerce as a whole is being unjustly discriminated against within the sense of Section 13 of the Interstate Commerce Act the State authorities of Georgia may not require continuance of such unjust discrimination even if it were true that a particular railroad might, as to certain interstate commerce, be charging less than the maximum interstate rate permitted on like traffic between two particular points.

5. It is not conceded that the distance from Montgomery to Atlanta is as much as 175 miles. In determining the interstate rate level and rates appropriately to be charged from neighboring states into Georgia this Commission in its late decision of Docket #17517 calculated the distance from Montgomery to Atlanta as less than 175 miles. It is true that in connection with testimony submitted at the hearing in Atlanta on November 26, 1928 a railroad official testified that subsequently to such decision of the Commission there had been made a recalculation of the distance from Montgomery to Atlanta with an indicated result mentioned in the motion here being considered. However, issue

with respect to such claim was not taken by Montgomery interests at that time or place because no pending proceeding before the Commission involves the question whether [fol. 301] the charge in effect on sand and gravel from Montgomery to Atlanta is less than the maximum previously authorized by this Commission. Of course, on any theory the information requested by the Georgia Public Service Commission would be without the slightest significance unless it should first be formally and finally decided that the prevailing charge from Montgomery to Atlanta is less than the maximum previously authorized. Therefore, to engage in consideration and decision of such matter as a condition precedent to a decision whether to require the information requested to be furnished would be collaterally to decide a question not now pending before the Commission in any proceeding, although such question would be one of vital importance to the Montgomery shipping interests and as to which they have not yet been heard.

6. It is of no concern that a railroad may have lawfully or unlawfully supplied other information for use as evidence in the pending procedings: the objection here goes to the particular information now requested by the Georgia Public Service Commission, and the furnishing of which would be detrimental and prejudicial to the interests of these protestants.

Respectfully, Roquemore Gravel Company, Alabama Sand & Gravel Company, by (S.) Chas. E. Cotterill, R. H., Chas. E. Cotterill, Attorney.

Suite 505 Grant Bldg., Atlanta, Ga.

[fols. 302-304] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia

No. 17763

ROQUEMORE GRAVEL COMPANY, et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, et al.

ORDER DENYING MOTION FOR ORDER REQUIRING CERTAIN INFORMATION—Jan. 14, 1929

Upon further consideration of the records in the above-entitled proceedings and consideration of the motion filed by the Georgia Public Service Commission requesting that certain defendants be directed to furnish information for the record as to the number of carloads and tonnage of, and rates charged and total freight charges collected on, sand and gravel transported during a representative period of 1928, from Montgomery, Ala., and points taking the same rates, to Atlanta, Ga.,

It is ordered, That the said motion be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 305] BEFORE INTERSTATE COMMERCE COMMISSION

No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

No. 17763

ROQUEMORE GRAVEL COMPANY et al.

v.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al.

ORDER DENYING REHEARING—Feb. 3, 1930

Upon further consideration of the record in the above-entitled proceedings, and upon consideration of petition

on behalf of the Georgia Public Service Commission "for rehearing, etc.";

It is ordered, That the said Petition be, and it is hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 1] Before Interstate Commerce Commission

Docket No. 17517

Rates on Chert, Clay, Sand and Gravel Within the State of Georgia.

Docket No. 17689

Roquemore Gravel Company et al.

v.

Atlanta, Birmingham & Atlantic Railway Company, et al.

Docket No. 17699, Sub. No. 1

Roquemore Gravel Company et al.

v.

Atlanta, Birmingham & Atlantic Railway Company, et al.

Docket No. 17763

Roquemore Gravel Company et al.

v.

Atlanta, Birmingham & Atlantic Railway Company, et al.

Docket No. 17764, Sub. No. 1

Dixie Sand & Gravel Company

v.

Atlanta, Birmingham & Atlantic Railway Company, et al.

I. & S. Docket No. 2470

Sand, Gravel and Slag from Alabama and Tennessee to Points in Georgia

Narrative Abstract of Evidence

Atlanta, Georgia, February 15, 1926.

Before E. I. Lewis, Commissioner, and E. H. Waters, Examiner

[fol. 2] APPEARANCES OF COUNSEL

Chas. E. Cotterill for Roquemore Gravel Co., Dixie Gravel Co., and Tennessee Cooper Co.

Edgar Watkins, for City of Atlanta, Fulton and DeKalb Counties, Georgia State Highway Commission, and Atlanta Freight Bureau.

Edwin Brooker, for Atlanta Sand & Supply Co., Atlanta, Ga., Allen Sand Co., Allen, Ga., Weston & Brooker, Columbia, S. C., Palmetto Quarries, Columbia, S. C., Southern Crushed Stone & Granite Co., Trenton, S. C., Stone Mountain Granite Corp'n, Atlanta, Ga., Stockbridge Stone Co., Stockbridge, Ga., Johnson Granite Co., Lithonia, Ga., Kinney & Newmeyer Granite Co., Lithonia, Ga., Wilson-Chapman Granite Co., Lithonia, Ga., Morris Stone Co., Macon, Ga., R. E. Suggs, Atlanta, Ga.

John S. Burchmore, appearing for Tri-State Road Material Association, interveners.

Otho M. Graves, and B. F. Martin, for National Crushed Stone Association.

B. F. Martin, for Alabama Rock Asphalt Co., Colbert Limerock Asphalt Co. and Uvalde Paving Company.

M. C. Moore, Rush H. Knox and B. F. Martin, for Mississippi Railroad Commission and Rush H. Knox, Attorney-General.

T. P. Goodwin, for Simpson Co. Gravel Co., Saratoga, Miss.

R. A. McCaffrey, for Cast Iron Pipe Committee of Alabama Iron & Steel Shippers' Conference.

C. E. Jones, for Birmingham Traffic Association.

A. J. Ribe, for Birmingham Slag Co., Birmingham, Ala., and Montgomery Gravel Co., Montgomery, Ala.

[fol. 3] C. R. Moffett, for Tennessee Cooper Co., Copper Hill, Tenn.

E. Del. Wood, for Chattanooga Manufacturers Association.

B. R. Shepherd, for Chattanooga Manufacturers Association.

J. L. Griffith, for Dixie Sand & Gravel Co.

E. J. Cosgrove, Jr., for Florida Rock Products Co.

H. L. Brooks, for North Georgia Marble Products Co., Thompson, Weinman & Co., and Ladd Lime & Stone Co.

H. T. Moore and E. L. Hart, for Atlanta Freight Bureau, State Highway Dept., Fulton County and City of Atlanta.

Frank W. Gwathmey, for Atlantic Coast Line R. R., Seaboard Air Line Ry., Central of Ga. Ry., Charleston & Western Carolina Ry., Georgia Railroad, Atlanta & West Point R. R., Western Railway of Alabama, and Nashville, Chattanooga & St. Louis Ry.

Edw. D. Mohr and B. F. Morris, for Louisville & Nashville R. R. Co.

C. J. Rixey, L. V. Crane and H. L. Walker, for Mobile & Ohio R. R., and Southern Railway System Lines.

T. T. Masengill, for Seaboard Air Line Ry.

Roy Pope, for Atlanta, Birmingham & Atlantic Ry., B. L. Bugg, Receiver.

E. M. Price, for Georgia Public Service Commission.

[fol. 4] STATEMENT BY COMMISSIONER LEWIS

Commissioner Lewis: Interventions have been allowed in Docket No. 17763, by Weston & Brooker Company, Palmetto Quarries, located at Columbia, S. C.; the Southern Crushed Stone Company, located at Trenton, S. C.; the Stone Mountain Granite Corporation, Stockbridge Stone Company, Johnston Granite Company, Kinney & Newmeyer Granite Company, Lithonia, Ga., the Wilson-Chapman Granite Company, the Morris Stone Company, Macon, Ga.; R. E. Suggs, Atlanta, Sand & Supply Co. and the Allon Sand Company, Allon, Ga., all located at points in Georgia.

In Docket 17763 and 17764 and 17764, Sub-No. 1, the Tennessee Copper Company, Inc.; and in No. 17699 and 17699, Sub-No. 1, the Birmingham Traffic Association.

The Tri-State Road Material Association, producers and shippers in western Tennessee, western Kentucky and

the State of Mississippi intervened in Dockets 17699, Sub-No. 1 thereof, and in 17689 and 17763. The Colbert Limerock Asphalt Company, et al., intervene in No. 17763 (Rec. 11).

The Birmingham Slag Company of Birmingham and the Montgomery Gravel Company of Montgomery intervene in Docket No. 17699 and Sub-No. 1, also Dockets 17689, 17763, 17764, and Sub-No. 1 (Rec., 13).

The State Highway Commission of Georgia, City of Atlanta, Counties of Fulton and DeKalb, Georgia, and the Atlanta Freight Bureau intervene in all of these cases (Rec., 13).

The Cast Iron Pipe Committee of the Alabama Iron & Steel Shippers Conference intervenes in Docket 17689 (Rec., 14).

The Alabama Public Service Commission intervenes in No. 17699 and the other cases heard herewith.

The Georgia Public Service Commission enters its appearance (Rec., 15).

[fol. 5] Commissioner Lewis: I will hand to those who have entered an appearance a four-page summary which I shall read and before doing so want to say that under our procedure as it has developed, it is possible in such a gathering as this for us to produce a record that is not only lengthy but confusing and full of repetition, a good deal of which could well fit into the realm of argument which we believe should be set aside for counsel (Rec., 16).

I am suggesting after mature thought that we see if we cannot shorten this hearing and save a great deal of needless expenses in all three elements of time, energy and money. I will read a brief statement of the issues and as the day progresses I want you to correct it if any correction is necessary (Rec., 17).

The order of investigation in this case, 17517, brings in issue the question of whether the rates on chert, clay, sand, and gravel and other commodities specified in said order required by the Georgia Public Service Commission by its Order of February 25th, 1925, to be maintained by the petitioning carriers herein for movement of said commodities between points in the state of Georgia result in undue and unreasonable preference and advantage to

intrastate commerce to the undue and unreasonable prejudice and disadvantage of interstate commerce and unjust and unreasonable discrimination against interstate commerce, and if so what rates, if any, should be prescribed to remove such advantage, preference, prejudice or discrimination (Rec., 17).

The complaint cases bring in issue the following matters:

[fol. 6] The reasonableness of rates on sand and gravel maintained by defendants from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia, Florida and Mississippi, and whether the said rates on gravel from and to the same destinations are unduly prejudicial to complainants and preferential of shippers of slag from Birmingham, Ala., and other producing points to the same destinations (Rec., 18).

Whether the rates maintained by defendants on sand and gravel from Montgomery, Ala., and Chattanooga, Tenn. to destinations in Georgia and Mississippi are unreasonable and unduly preferential of intrastate shippers of the same commodities between points in the states of Mississippi and Georgia, and of shippers of crushed rock intrastate between points in Georgia (Rec. 18).

Whether a rate of 79 cents per ton maintained by the Central of Georgia Railway and the Atlanta, Birmingham & Atlantic Railway from certain points on their lines in Georgia to Birmingham, Ala. is less than a just and reasonable rate (Rec., 18).

And now, I. & S. 2470. I understand that the only issue remaining in this proceeding for consideration is the propriety of certain schedules which propose increased rates on slag from Copperhill, Tenn. to points in Georgia, the other schedules having been withdrawn and revised schedules subsequently filed in lieu thereof having been permitted to go into effect (Rec., 18).

I have taken the matter up with Mr. Gwathmey for the carriers and understand there is to be an extension of the effective date of the tariffs.

You will let me know during the day whether this statement substantially sets forth the issues involved.

[fol. 7] Mr. Gwathmey: I will submit the question of an extension of the tariffs to the representatives of the carriers and report the answer (Rec., 19).

Mr. Martin: It is quite probable that at the proper time I shall offer a motion to eliminate any reference to the freight rates in Mississippi (Rec., 19).

If this complaint Docket 17763 presumes to place in issue the intrastate rates in Mississippi, which I understand from this that it does, then we shall offer a written motion to eliminate that, because the issues are not properly joined, and they are so indefinite and so general in character that it is impossible for the state authorities of Mississippi to know what rates are under attack (Rec., 20).

Commissioner Lewis: I will propose in the hearing of these cases, if agreeable to counsel, to eliminate the filing of preliminary briefs. There will be a proposed report to which exceptions can be taken covering what otherwise would be included in preliminary briefs. After the testimony is in we will give counsel an adequate time to digest the testimony, not over twenty-four hours, and then on this record you may make your summation and diagnosis and argue the case orally. It will be our purpose to limit the testimony here to the realm of facts and leave the argument for the attorneys (Rec., 21).

QUESTIONS SUBMITTED

In order that there may not be in these proceedings duplication of testimony, testimony upon matters that have little or no probative force in the decision of the issues, or controversy as to facts as to which the parties might agree, and to the end that the testimony offered may only concern controverted and material facts, I submit to all parties for their consideration the following questions:

[fol. 8] (1) Can agreement be reached as to average value at shipping point of the different commodities involved in these proceedings?

(2) Do the parties agree that the different values of the several commodities at shipping points do not warrant a difference in the transportation rates applied? If the parties are of opinion that there should be a difference in the rates, can they agree as to the difference?

(3) Can agreement be reached as to the average loading of each commodity?

(4) Can agreement be reached as to the points of shipment of each of these commodities in the states of Georgia, Alabama, Mississippi, Tennessee, North and South Carolina?

(5) Can agreement be reached as to the extent of the movement for a representative period of the several commodities involved?

(6) Is it agreed that the operating and transportation conditions throughout the general territory here involved are similar? (Rec., 21.)

(7) May it be admitted in principle that the same basis or level of rates should apply on these commodities throughout the general territory here involved and that such is true whether the movement is interstate or intrastate? An answer to this question in the affirmative will not be construed as preventing any party from offering proof to show instances where due to exceptional conditions the normal level of rates should not be applied (Rec., 22).

(8) Assuming that the same basis or level of rates should apply throughout the general territory involved, can the parties agree in suggesting to the Commission the manner by which this should be brought about? That is, by the prescription of a mileage scale of rates, specific point to point rates, or otherwise (Rec., 22).

[fol. 9] (9) In Sand and Gravel to the Southeast, 83 I. C. C. 436, the Commission found justified a certain scale of rates on sand and gravel from points on the Charleston & Western Carolina Railway to points in the Southeast. Can an agreement be reached as to the extent such basis of rates there approved is relevant for consideration in connection with the disposition of these proceedings? Is there any objection by the parties to stipulating that the intrastate scales of rates considered in that case may be considered as part of the record in this case? (Rec., 22.)

(10) In Meridian Traffic Bureau versus Southern Railway Co., 60 I. C. C. 5, and Meridian Rate Case, 66 I. C. C. 179, the Commission fixed, among other things, a basis of rates on sand and gravel from Meridian, Miss., to certain destination territory in Alabama. Can an agreement be

reached as to the extent such basis of rates is relevant for consideration in connection with these proceedings? (Rec., 23.)

(11) If it is shown in these proceedings that a revision or readjustment of the rates on these various commodities is warranted, should such revision or readjustment be accomplished in such a way as neither substantially to reduce or substantially to increase revenues now derived by the carriers collectively for the transportation of such commodities?

(12) The enumeration of the above questions for consideration is not meant to exclude from consideration by the parties of other matters which might occur to them and upon which an agreement might be reached. As has been stated, it is desired that testimony be offered only upon controverted and material facts (Rec., 23).

[fol. 10] It will be the purpose of the Commission in this record to limit testimony to the realm of fact, leaving for counsel deductions and arguments (Rec., 23).

MOTION TO DISMISS

Mr. Martin: I would like at this time to move to dismiss that part of the complaint concerning the Mississippi intrastate rates. We take the position that it is impossible to determine our state rates under such a complaint. It is too broad (Rec., 26).

Mr. Burchmore: I desire to concur in this motion, which is jurisdiction, on behalf of the Tri-State Road Material Association (Rec., 26).

Mr. Cotterill: I should not like to speak out of my turn, but the thought is so insistent in my mind that there is one decisive answer to the motion that I really believe it would economize in the end if I might be permitted to call attention to the fact that counsel representing the movements must on reflection realize that there is no possibility under the statute for one Commissioner to dismiss a case; in other words, if we were to assume defects in the complaints of a

character which in law would warrant dismissal, we are compelled necessarily to call attention to the fact that there is no method provided in the statute by which one commissioner may assume responsibility for reaching such a decision (Rec., 26).

Mr. Martin: It is a matter of ruling on the testimony to be taken (Rec., 26).

Mr. Burchmore: I concur in the technical point made by Mr. Martin and desire to say that the members of the Association which I represent and who ship these materials on intrastate rates in Mississippi, are not sufficiently informed of what is here under attack, so that we could prepare any sort of defense to what the attack may prove ultimately to be (Rec., 28).

[fol. 11] Mr. Cotterill: The rules of practice make express provision for filing motions of this character before the hearing. No complaint may be dismissed at any time by one member of the Commission. I am proposing avoiding any reply to the supporting argument which counsel have made (Rec., 29).

Commissioner Lewis: Even if there were a division of the Commission present, we would probably not act on this motion offhand. The hearing will proceed. The matter is of record and will be laid before the Commission (Rec., 29).

We will take testimony concerning the Mississippi intrastate rates (Rec., 29-30).

Mr. Martin: I wish to note an exception (Rec., 30).

After discussion, President Patterson of the Alabama Commission was chosen as chairman of the conference of the parties to the case for discussion of the questions presented by Commissioner Lewis (Rec., 42).

The hearing recessed to February 16 (Rec., 45).

[fol. 12] Atlanta, Georgia, February 16, 1926.

The Central of Georgia Sand Company and Acme Sand & Supply Company intervene in No. 17689 (Rec., 46).

ANSWERS TO QUESTIONS

Mr. Patterson: Before making the report of the conference yesterday, I express the high appreciation of the mem-

bers present of the motives which prompted you to suggest the conference and a method by which these proceedings might be shortened and expedited. It was the unanimous opinion of the conference that such results as were anticipated by the suggestions made by you would be most fortunate if they could have been fully realized. But due to variance of interests and conflict of opinion, it was impossible for the conference to agree upon many of the questions propounded (Rec., 48).

The answer of the conference to question No. 1 is in the negative.

The answer to question No. 2 is in the negative.

The answer to question No. 3 is: That the information immediately available was so meager that it was impossible, certainly at this time to state what is the average loading over the territory as a whole of these commodities, and it was therefore suggested that the question be answered by the statement that the loading generally is the marked capacity of the car or greater, with the right of any parties to submit evidence which they may have as to the loading of these commodities (Rec., 48).

The answer to question No. 4 is as follows: The carriers agree to provide a list of points of shipment after receiving within 48 hours a suggestion from representatives of the shippers, and to report said list for the record; Mr. Morris of the Louisville & Nashville Railroad was designated by the carriers and has kindly agreed to receive sug- [fol. 13] gestions and data from the shippers as to the points of shipment of the various commodities involved (Rec. 49).

The answer to question No. 5 is in the negative.

The answer to question No. 6 is: Yes, except as to the Peninsular of Florida, as to which it is agreed that exceptional treatment is justified, and except as to the short lines, the Louisville & Nashville Railroad reserving the right to make a showing in behalf of the Louisville & Nashville Atlanta Division Old Line. In this entire answer, the Mississippi interests do not concur (Rec., 49).

The answer to question No. 7 is, no.

The answer to question No. 8 is: The conference is unable to agree.

The answer to question No. 9 is, no as to the first question and yes as to the second question (Rec., 49).

The answer to question No. 10 is: An agreement cannot be reached.

The answer to question No. 11 is: No, the readjustment should be made upon the theory of establishing a just and reasonable basis of rates on these commodities, regardless of whether an increase or decrease of revenue in the aggregate may result. Mr. Martin on behalf of the Mississippi Railroad Commission voting in the negative (Rec., 49).

Under paragraph 12, the conference gave consideration to the matter of minimum carload weights, and agreed that the following minimum weights be prescribed for uniform application in the Southern territory, namely: 90 per cent of marked capacity of car, except where cars are loaded to full visible capacity, actual weights shall apply (Rec., 50).

The conference discussed the procedure and agreed that the order of procedure should be decided upon by the presiding Commissioner (Rec., 50).

[fol. 14] Mr. Cotterill: It was suggested that the complainants in the formal complaint cases proceed first. That is agreeable to us and we are ready. (Rec., 50).

Commissioner Lewis: That is our view also and you will therefore proceed (Rec., 50).

The National Crushed Stone Association intervenes (Rec., 51).

Mr. Cotterill: There are two formal matters affecting the pleadings, which the complainants would like to have disposed of at this time. In the formal complaint drawing in the question the relationship of charges from certain points in Alabama to the State of Mississippi in contrast with the charges prevailing within that state, the Yazoo & Mississippi Valley Railroad was inadvertently omitted as defendant. To amend the complaint at this time against the objection of that carrier would have been without avail. To meet that difficulty, I have taken the matter up with counsel for the Yazoo & Mississippi Valley Railroad who consents to showing that railroad as a party defendant, with the one reservation, that no claim of reparation is made against it. I therefore move to make that carrier a defendant to that case (Rec., 52).

Mr. Burchmore: I object. The complaint in No. 17763 relates only to alleged violations of section 1 and section 3,

It does not in terms charge violations of section 13. It was mailed by the Secretary of the Commission to the state authorities of Mississippi in accordance with the requirements of section 13. That section is jurisdictional. The failure to serve upon the state authorities complaint which attacks the rates within that state would be fatal to any order. The failure to have served a complaint naming the Yazoo & Mississippi Valley Railroad as a defendant is jurisdictional and cannot be cured by amendment at the hearing (Rec., 53).

[fol. 15] Mr. Martin: I concur in the objection on behalf of the state authorities in Mississippi (Rec., 53).

Mr. Martin: There are several important lines in Mississippi which are not named as defendants, including the Southern Railway, Alabama & Vicksburg and Gulf & Ship Island Railroads (Rec., 56).

Commissioner Lewis: The objections are of record here and we will proceed with the hearing (Rec., 56).

Mr. Cotterill: The other point we wish settled is that the complainants do not contend that there should be any difference in charge as between washed gravel and slag and crushed rock (Rec., 57).

[fol. 16] J. D. Roquemore testified as follows:

I am President and General Manager of the Roquemore Gravel Company, engaged in the production of gravel and sand in Montgomery (Rec., 57).

Commissioner Lewis: I wish to state now that the witnesses will be restricted to statements of fact, and we will leave to counsel the arguments and deductions and analysis (Rec., 57).

There are other companies engaged in the production of sand and gravel in Montgomery and its vicinity. Clay gravel is also produced in the Montgomery area (Rec., 58).

In the Montgomery area, sand is a by-product of the production of washed gravel (Rec., 58).

Washed gravel is used for concrete work in all forms, road work principally, concrete buildings, floors and roads (Rec., 58).

Sand is a filler in concrete with gravel or crushed stone and slag. Sand and gravel do not compete with each other (Rec., 58).

Clay gravel is used exclusively in building roads and competes with washed gravel. They use clay gravel and washed gravel for the same purposes in building roads (Rec., 59).

Clay gravel is used in the construction of roads without the addition of other materials. When washed gravel is used it is generally mixed with other materials, with clay or with sand and cement (Rec., 59).

The current prices obtained by the Montgomery producers for washed gravel range from 50 to 90 cents per short ton; for sand, from 15 to 20 cents per short ton, and for the clay gravel produced in the district, 25 to 30 cents per ton (Rec., 59).

Immediately north of Montgomery are other producing points, Jackson's Lake and Prattville Junction, Alabama, [fol. 17] both of which produce both sand and gravel. Their operations are relatively small. The prices they obtain for sand are not higher than the prices we obtain. With them, gravel is a by-product of the production of sand, just the opposite of what it is at Montgomery (Rec., 60).

Gravel is produced at only a comparatively few points in the south. Sand is produced at many points. There is a potential production of sand throughout the whole Southern territory, either an actual or potential local production of sand in the vicinity of all of the large cities (Rec., 61).

There is competition between washed gravel, slag and crushed rock (Rec., 61).

Cross-examination:

The current price of 15 to 20 cents per ton for sand is not a low figure, but has prevailed for several years (Rec., 62).

By Mr. Mohr:

Q. Is it your idea that there should be a different rate on sand than on gravel?

Objection by Mr. Cotterill; sustained.

By Mr. Mohr:

Q. Is it your purpose to defend a scale of rates of any kind in this proceeding?

Objection by Mr. Cotterill; sustained (Rec., 62).

Clay gravel has got clay in it, and the unwashed gravel that we produce is sand and gravel; instead of containing clay it contains sand (Rec., 63).

The value of 15 to 20 cents a ton which I have given has been our selling price for possibly three or four years. Those were the prices in 1923. The same thing is true of the values given on washed gravel. We have received from 50 to 90 cents per ton for the last four or five years (Rec., 63).

[fol. 18] We come in competition with the shippers at Prattville Junction and Jackson's Lake. I do not know that you would call it a price war, but there has been really an over-production of sand in that district. With the large producers of gravel, sand is a by-product. We have been unable to get away from the short-hauls and have not been able to dispose of it and this has had the effect of putting the price of sand down (Rec., 64).

You can tell the difference between unwashed gravel and clay gravel by observation. The clay is dirty and the sand is clean. There is some clay in unwashed gravel. Unwashed gravel has gravel, sand and clay in it, whereas clay gravel has clay and gravel in it only, and perhaps some sand (Rec., 64).

We sell washed gravel and sand in Montgomery. We get 15 cents, probably 10 cents, a ton on sand more in the City of Montgomery than we do anywhere else. For gravel we get as much on the outside as we do in the city (Rec., 65).

The maximum price we have received for sand in the last few years has been probably 20 cents, except that in Montgomery we get in some instances 30 cents for it as a maximum price (Rec., 65).

We ship to Birmingham, Woodward, and Bessemer, Alabama, a substantial tonnage of sand. We sell sand to the manufacturers of pig iron at Birmingham. I do not think they are using any of our sand for pig iron moulds. I really do not know just what purpose they are using it for. We sell sand also to contractors in the Birmingham district, doing concrete work (Rec., 66).

By Mr. Pope:

Q. Can you give us the tonnage of sand that you have shipped from Montgomery to the points I have named during the year 1925?

A. No, I haven't got it with me. I could get up an itemized list of it.

[fol. 19] Mr. Pope:

Q. Will you do that please?

Mr. Cotterill: That is information which the railroads themselves have. The rules provide a method for seeking the production of documents. If it were the fact that it would require any great effort for the railroads to examine their waybills and supply themselves that information, I would not resist the suggestion that we furnish it, but I am simply trying to avoid the inconvenience and expense of going through our books with the idea in view of having to pick out tonnage from a particular shipping point to a particular destination (Rec., 68).

By Commissioner Lewis:

Q. Wouldn't it be possible for you to make a close approximation of your shipments in 1925?

A. I think our shipments into Birmingham would average between 30 and 50 cars a day.

Mr. Pope: That is a sufficient answer.

We do not sell any sand for the manufacture of pig iron. Our sand will not do to manufacture pig iron with, I know that to be a fact. We have tried to sell it for that purpose and it won't pass (Rec., 69).

The sand produced at Jackson's Lake and Prattville is similar to that produced at Montgomery (Rec., 69).

Our sand production at Montgomery is a by-product and the major product is washed gravel. This does not mean that it costs us less to produce it. In fact, it costs us more to produce it, just as much to produce it, we are compelled to produce it along with the gravel (Rec., 67).

The sand and gravel are both mined together. The character of the washing plant is such that all of our product has to pass through the wash plant. When we finish with

the sand we have already manufactured and washed it. To waste it would cost us more money than it would to sell it (Rec., 70).

We have already gone through all of the operation of properly preparing the sand; then it becomes necessary to go to an additional expense to make it a by-product. [fol. 20] The plants at Jackson's Lake and Prattville produce sand as a product and gravel as a by-product. Their sand deposit does not run as high in gravel as ours does. They were formerly in the sand business and they naturally make some gravel. Their ma-n object is to sell sand. Their market price for sand is only 15 or 20 cents a ton. We are just the reverse of that; we are supposed to be in the gravel business. I would like to go back and say we have sold sand three or four years ago for 30 cents in Birmingham. I think during that year Jackson's Lake was getting 50 cents a ton for sand. In the last year or two, I do not know of any they have sold for that (Rec., 71).

I got the information that Prattville Junction and Jackson's Lake are selling sand for 20 cents, from them direct, where I come in competition with them (Rec., 72). We use all kinds of open top cars for loading sand, the same class as for gravel (Rec., 72).

The two commodities load about the same, to full capacity of the car (Rec., 72). It costs us quite a considerable amount to patch cars for sand. We have to employ sacks and pay pretty good prices for them and then employ labor to patch them. I would say it costs us two or three dollars a car to patch them (Rec., 72).

The scope of territory to which we ship sand from Montgomery would be Birmingham and Atlanta. They are really the only districts that we can ship sand into to amount to anything. Every other place that we try to get into we run up against competition of local sand. Excepting those two markets, we are confined to a 50 and 75-mile radius (Rec., 73).

In the distribution of gravel we go as far as 300 or 400 miles. We ship gravel into Florida and the Carolinas and also into Georgia (Rec., 74).

Clay gravel competes with washed gravel in building roads. It also competes with crushed stone and slag (Rec., 74).

[fol. 21] I do not know what the movement of gravel is to Atlanta. Anything we sell there is at above 50 cents per ton (Rec., 74).

We have quoted within the last two weeks a price of 50 cents on gravel for work in the City of Atlanta.

We have not shipped any gravel into Atlanta within the last three months at a price of 90 cents per ton F. O. B. plant, but we have shipped some at a price of 85 cents. I think we have shipped more gravel to Atlanta at 85 cents F. O. B. plant than we have at 50 cents in the last three years. That price was F. O. B. plant, but less 10 per cent to the men that were selling it in Atlanta (Rec., 75).

We get lots of work at a price of 90 cents direct to the contractor, without commission to a middle man (Rec., 76).

We are quoting more than 60 cents per ton now f. o. b. Montgomery for projects in Atlanta. We offered gravel for the Sears-Roebuck job in Atlanta in the last thirty days at 55 cents per ton and lost it. There are no Georgia producers that produce sand and gravel. They don't produce gravel. They produce materials which compete with gravel (Rec., 76-77).

I should say that probably 33⅓ per cent of our material moves to Florida (Rec., 77).

We also ship gravel to points in Eastern Georgia as far east as Savannah, Brunswick and Charleston, South Carolina (Rec., 77).

The deposits of crushed stone are numerous but are confined to certain districts. There are numerous deposits of crushed stone in Georgia (Rec., 78).

The Georgia producers of crushed stone with which we compete are located around Atlanta. In the Atlanta market we compete with the quarries around Stone Mountain, also at Lithonia, within a distance of about 25 miles of Atlanta [fol. 22] (Rec., 80).

I do not know of any building projects in Atlanta in which crushed stone from Lithonia or Stone Mountain or anywhere within 25 miles of Atlanta has displaced our gravel. My impression is that they are not after that kind of work as much as they are road work. In Atlanta we come in competition with crushed stone more on concrete roads than we do on the building end. I regard crushed stone as a competitor of mine in the city of Atlanta, for construction pur-

poses, but I think their output is more confined at the present time to road and street paving. I suppose they bid on such projects, but I don't know. I don't know if they bid on the Sears-Roebuck job (Rec., 80).

Redirect:

In the effort to distribute our gravel in as wide a territory as possible, we encounter actual or potential competition from producers of competing materials wherever they may be (Rec., 81).

The preponderance of our movement is to points south and east-rather than westward. We have not been able to ship either sand or gravel into Mississippi (Rec., 81).

Objection by Mr. Martin and motion to strike. Objection noted (Rec., 82).

Mr. Martin: My objection goes only to dealing with intrastate rates. I have no objections to his dealing with the interstate rates into Mississippi.

I ask that my objection will go to all similar questions without repeating it.

Commissioner Lewis: It will. As I understand, it is tied up with your motion and will be so considered (Rec., 82).

Mr. Martin: Was a ruling made on Mr. Cotterill's proposed amendment as to the Yazoo & Mississippi Valley Railroad?

Commissioner Lewis: It went into the record, subject to your objection.

Mr. Burchmore: You mean the Yazoo & Mississippi Valley Railroad is a defendant now subject to our objection?

Commissioner Lewis: Yes (Rec., 83).

[fol. 23] I would say that the Montgomery district produces around 1,500 to 1,800 cars a week of sand and gravel. I would say that the *com*pacity is somewhat in excess of that, I would not know just how much (Rec., 83).

Recross-examination:

We have furnished estimates of production and values through the Department of Interior (Rec., 84).

If we shipped from our plant at Montgomery into the State of Mississippi over the Mobile & Ohio Railroad, the

first important town on the Mississippi side of that railroad would be Columbus. There are four plants at Columbus producing sand and gravel (Rec., 84).

We could ship into Mississippi over the Louisville & Nashville Railroad. The first station of any importance on that line is Pascagoula. I would not say there is any big operation in that vicinity, but we come in competition with Hattiesburg down in that territory. Hattiesburg ships over the Gulf & Ship Island Railroad and not over the Louisville & Nashville (Rec., 85).

We can ship into Mississippi over the Frisco. We could get in there if we had some rates. None of the producers in that section are as big as we are (Rec., 86).

I do not see why I could not ship into Mississippi as good as Georgia, if I had the same conditions (Rec., 87).

Witness excused.

[fol. 24] C. E. IRELAND testified as follows:

I am Vice President and Sales Manager of the Birmingham Slag Company, which produces slag at Birmingham, Alabama (Rec., 87).

Slag is also produced at Alabama City, at Vanderbilt, which is a suburb of Birmingham, at Woodward, at Bessemer, and at Ensley, Alabama. They are all iron and steel producing points (Rec., 88).

Slag is a by-product of iron and steel production (Rec., 88).

We ship slag all over the State of Alabama and also into Tennessee, North and South Carolina, Georgia, Alabama, Mississippi, Louisiana and Florida (Rec., 88).

Slag comes into competition with crushed stone, crushed granite, gravel, chert and clay gravel (Rec., 88).

Mr. Gwathmey: There is no formal complaint here which attacks the reasonableness of the rates on slag from Birmingham (Rec., 90).

Mr. Cotterill: Well, as you state it in that way, that is true, but there is a complaint alleging discrimination against gravel from Montgomery in favor of slag from Birmingham (Rec., 90).

Slag encounters competition with the enumerated products at all of the places where those other products are produced in the south (Rec., 91).

The prices of slag range from 20 cents to $1.35 a ton. This wide spread is accounted for by the different grades of slag (Rec., 92). We crush and screen and market slag in different sizes; we also market what we term shovel run or bank run slag. That is, of course, the lowest grade slag (Rec., 92).

The crushed and screened slag has a slight edge in production, not much. The representative average price for that grade of slag is 66 cents per ton f. o. b. shipping point [fol. 25] for the year 1925 (Rec., 92). Crushed rock in the Alabama district is sold for from 65 cents to $1.25 a ton at the plant. In Georgia, coming in competition with it, it sells for from 90 cents to $1.50; in South Carolina, I should say from $1.25 to $2.25. There is no crushed stone in Mississippi. In Tennessee I will say that an average of $1.00 a ton on stone, and it would probably vary from 90 cents to $1.30; in North Carolina, from $1.25 to $1.75. I am giving these just as my recollection of individual competitive jobs which I have covered (Rec., 93).

We also operate through affiliated companies, gravel and sand producing plants. Our principal plant is at Arrowhead, Alabama, 13 miles east of Montgomery (Rec., 94).

In the distribution and sale of gravel and sand from Arrowhead, we encounter the competitive prices of other producers. We find that gravel ranges from 50 to 90 cents and the sand ranges from 15 to 35 cents on an occasional car. These are our prices (Rec., 94).

I have knowledge of the prices of other producers only in a general way (Rec., 95).

The principal area of gravel production in the south is Montgomery and that is the principal place of sand production. The Birmingham district is the principal place of slag production in the south. The principal rock producing sections are in the Birmingham district of Alabama, the rock quarries immediately around Atlanta, because of the Stone Mountain ridge, around Columbia, South Carolina, Macon, Georgia, Stockbridge, Georgia, Piedmont or Portland, Georgia, and Chestatee, Geo[illegible] (Rec., 95).

I would estimate the total production of slag in all of the plants in the Birmingham district as about one million and three quarters tons (Rec., 96).

[fol. 26] I do not think that washed gravel is produced within the State of Georgia. Slag is not produced in Georgia or in Mississippi (Rec., 96).

Cross-examination:

This company ships slag from the Birmingham district into Georgia and sand and gravel from Arrowhead into Georgia. We ship these commodities in competition with producers of sand and gravel and crushed stone who are located within the State of Georgia (Rec., 97).

By Mr. Walker:

Q. Is your rate on slag from Birmingham into Georgia and Mississippi the same as the rate on gravel?

A. In some instances yes, and in some instances, no.

Q. Do you think there should be the same rate on slag of all values?

Mr. Cotterill: I object to that question.

Commissioner Lewis: The objection is sustained (Rec., 97).

The Montgomery district is the largest single producing point of sand and gravel in southern territory. The materials are produced, however, at numerous points throughout the territory. Tennessee is a large producing territory of crushed stone (Rec., 97).

We are not interested in any other sand or gravel producing company other than that at Arrowhead (Rec., 98).

I have heard that there is a production of crushed limestone in Cullman County, Alabama, but I have never come in competition with it. I inadvertently failed to mention the stone quarries in the vicinity of Russellville, Alabama (Rec., 98).

The price of 66 cents per ton in 1925 is the average price of our actual sales figured on the gross weight and the net revenue (Rec., 98).

[fol. 27] I was in the crushed stone business for twenty years before I went into the slag business. The lime rock deposits vary considerably in the different states, the costs

of explosives will vary in the different deposits in blasting down to the point where it can be crushed, likewise the condition of stratification. The granite quarries around Columbia, South Carolina, necessarily because of the nature of their deposits and the hardness of the rock, have a higher cost of production than a limestone deposit. A lime rock producer in drilling and shooting lime rock which is semi-stratified, naturally uses less explosives and much less labor and power in the way of steam shovels and to load and to prepare it for commercial market. Of course, local labor conditions, water, fuel, and all those things enter into the cost of production, and naturally the cost of production materially enters into the sale prices (Rec., 100).

The sale prices are f. o. b. the quarries.

In my estimates I have included the material known as dolomite, which is a crushed stone. It is used in the smelting of iron and steel (Rec., 100).

We ship sand and gravel from Arrowhead but not to Birmingham or Woodward or any point in the Birmingham district (Rec., 101).

Our plant at Arrowhead is not the only sand and gravel operation that we have; we have another at Chehaw (Rec., 101).

By Mr. Brooker:

Q. Isn't it also true that you expect to establish an operation at Montgomery?

Objection by Mr. Cotterill; sustained.

Slag is a by-product of blast furnaces; it is our chief production. I think we have sold sand for one or two jobs for 10 cents per ton (Rec., 102).

In stating the prices of crushed stone in Georgia, I get [fol. 28] my information from my representatives in the field. I am not concerned particularly as to the shipping point. I have heard of prices of 90 cents and of less than $1.10 a ton quoted on granite stone produced at quarries near Atlanta (Rec., 103).

In marketing our slag, I don't know that I could name a specific point as our chief competition. We encounter some competition with gravel at Montgomery, but not any more than with any other source of supply (Rec., 103).

There is a slag producing plant at Copper Hill, Tennessee, which is the only slag plant in the south outside of Alabama. The Woodstock Slag Corporation of Birmingham had 2 plants, one at Vanderbilt and one at Woodward, Ala. The Sloss-Sheffield Co. have one crushing and screening plant at the city furnaces in Birmingham (Rec., 104).

We ship slag into Mississippi over every railroad that goes into Mississippi and we ship clear across the state (Rec., 104).

There is a standard price on slag, always has been, that may be regarded as the prevailing market price. There is a standard price now for sand and gravel, but there hasn't always been. Market conditions and competitive conditions have a material effect on prices.

Slag comes into competition with chert and clay gravel in the cheaper type of road construction. The two commodities are used in identically the same way (Rec., 105).

There is no competition between sand, as a road building material, and slag, as a road building material (Rec., 105.)

They do compete in making concrete, if you are going to be technical (Rec., 105).

Offhand I would say that gravel is produced at six points in southern territory and sand at probably sixty or maybe 600 points. I am grouping your plants at Columbus as a point, Greenville, Mississippi, as one, Hattiesburg as one, etc. I overlooked the State of Mississippi. I would say that there are not over twelve points at the outside which produce gravel in the south (Rec., 106).

Witness excused.

[fol. 29] J. L. GRIFFITH testified as follows:

I am traffic manager for the Dixie Sand & Gravel Company at Chattanooga (Rec., 108).

Approximately 50 per cent of our total production is consumed in Chattanooga or by truck deliveries. The remainder of the production is transported by railroad. It is our endeavor to make as extensive and wide distribution by railroad as we can (Rec., 108).

The price of gravel within the Chattanooga district, truck deliveries, ranges from about $1.00 to $1.10 per ton. Where

railroad transportation is used it ranges from 40 cents to 75 cents (Rec., 109).

Sand produced at Chattanooga sells at from 90 cents to $1.00 per ton for local deliveries in Chattanooga, and at 30 cents to 65 cents per ton f. o. b. Chattanooga when for deliveries at outside points by railroad. This is washed gravel and washed sand (Rec., 109).

The area in which we attempt to distribute sand and gravel ranges according to the competitive conditions under which we are able to obtain business at specific points. Ordinarily, the area would be within 200 to 250 miles (Rec., 110).

Q. If there be a parity of transportation costs as between you and your competitors, is it the effort of your company to distribute as far as your costs of production and the railroad transportation costs would enable you to go?
A. Yes, sir.

Cross-examination:

We ship sand and gravel from Chattanooga into Georgia, but not extensively. The freight rate will not permit us to. That is what we are complaining about (Rec., 110).

Q. Do you come into competition at points in Georgia [fol. 30] with producers of sand and gravel located within that state?
A. Yes, sir.

By Mr. Cotterill:

Q. Not as to gravel, you mean sand?
A. I mean as to sand.

By Mr. Gwathmey:

Q. Do you as to gravel?
A. Not so much as to gravel as to sand, but gravel does come into competition with crushed stone which is produced within the state of Georgia (Rec., 110-111).

I think my exhibits will show later on that we are shipping into Georgia in competition with producers within that state who have lower freight rates. That is the reason of

our complaint of discrimination. That is one of the things that is keeping us out of Georgia today (Rec., 111).

We do not ship into Alabama to any considerable extent today. One trouble is the available markets within a reasonable range of Chattanooga.

Q. Is there anything wrong with your situation from Tennessee into Alabama to prevent you from shipping into Alabama?

A. Yes, sir, I should say there is.

Q. How is it that you do not complain?

Mr. Cotterill: I object to counsel asking this witness why he did not complain of something else than he did complain about.

Commissioner Lewis: There is no complaint here against the Alabama rates and we will stay out of that state. That is not before us (Rec., 112).

By Mr. Walker:

Q. Did you state you did not ship into Alabama because you had other available markets around Chattanooga?

A. I did not state that, there has never been sufficient business in Alabama for us to actually develop the trade in that state in a vicinity where we could reach (Rec., 112). [fol. 31] If we had a parity of transportation costs, we could increase the scope of our business. We have not a parity with Montgomery. I have some exhibits to show the whole situation which will be filed later (Sec., 113).

(Discussion as to the issues in No. 17763 and the objects of the complaints therein (Rec., 114-117).

We do not now ship from Chattanooga into Mississippi. The principal railroads from Chattanooga to Mississippi include the Southern Railway, Alabama Great Southern, Central of Georgia, and Nashville, Chattanooga & St. Louis. The Alabama Great Southern would be the direct route to Southern Mississippi and the Southern Railway to Northern Mississippi (Rec,, 118).

We produce washed sand at Chattanooga. We have no market for sand in Birmingham, but if we shipped there I presume we would come in competition with Montgomery sand, as well as others (Rec., 119).

Sand is not a by-product of the plant at Chattanooga (Rec., 121).

Witness excused.

[fol. 32] J. H. ALDREDGE testified as follows:

Mr. Cotterill: I tender in evidence as Exhibit No. 1 a bound document containing a number of sheets which should be numbered consecutively from Sheet 1 to the end. Distribution has been made. It is suggested that the pages simply be numbered consecutively, regardless of the number of sheets in each particular exhibit. Attention is called to the fact that in this set of exhibits there appear quotations from the testimony of Witness N. B. Wright in a previous proceeding, as well as of Mr. Browder; it is suggested that those pages not be numbered separately, but that those excerpts from the previous testimony be marked 3-A (Rec., 121).

Mr. Burchmore objected to sheet No. 1 of the tendered exhibit, which purports to be extracts from certain decisions of the Commission upon two grounds; first, that the Commissioner had ruled there should be no argument, and that the proof should be limited to matters of fact in the case, the sheet constituting argument and not proof of facts; and second, that if intended by sheet 1 to prove the facts that were said to have been stated by the Commission in those decisions, it is secondary evidence and is not competent because it is not the best evidence of those facts (Rec., 122).

Commissioner Lewis: I think we shall overrule the objection. Certainly it is a different character of evidence from that which I had in mind, and which you well know I had reference to, namely testimony that goes into argument in certain portions (Rec., 124).

Mr. Burchmore noted an exception. He thereupon objected to sheet 3-A of Exhibit 1 which purports to be the testimony of Mr. Wright and Mr. Browder given for the carriers in another case and exhibits filed by them in that other case. The ground stated for the objection was that it is incompetent, with no opportunity of cross-examination and the witnesses were responsible traffic officers of

these railroads who were available as witnesses herein (Rec. [fol. 33] 124).

Commissioner Lewis: I am going to shorten up this. Mr. Burchmore, you are overruled again, this is certainly within the rules, and we will proceed.

Mr. Burchmore noted an exception.

By Mr. Cotterill:

Q. Mr. Aldredge, were the 28 sheets constituting Exhibit No. 1 prepared by you or under your direction?

A. They were.

Q. To the best of your knowledge and belief, are the facts therein contained correct and true?

A. They are.

Mr. Cotterill: We tender the exhibit in evidence (Rec., 125).

Mr. Gwathmey: Before the exhibits are finally received, I think that the parties should at least have an opportunity to look them over. Can they not be received subject to such objection as the parties may have to make in the hearing?

Commissioner Lewis: I think so, that is entirely agreeable to the Commission (Rec., 125).

Mr. Cotterill: Now, distribution has been made of one sheet consisting of a comparison of the freight revenue and passenger service and other revenue and other statistical items which appear in the caption. Was that exhibit prepared by you or under your direction?

A. It was (Rec., 126).

Mr. Cotterill: I tender it in evidence.

The exhibit was received subject to subsequent objection.

Cross-examination:

In several places in Exhibit 1 is shown a column headed "Carriers' present proposed scale". Along about the year 1917 the principal class 1 carriers of the southeast, with the exception of the Louisville & Nashville Railroad, pro- [fol. 34] posed to the Georgia and Alabama Commissions a general revision of intrastate rates on classes and commodities, included within which was a scale on sand and

gravel and related commodities. Substantially that same proposal was submitted to the Interstate Commerce Commission in the Meridian Rate Case, and it was stated by the carriers at that time that it was designed to harmonize state and interstate rates, and would be applied interstate when the state commissions acted. That proposal after the Interstate Commerce Commission had adopted it in all essential particulars in the Meridian Rate Case, was later withdrawn from the Alabama and Georgia Commissions by the United States Railroad Administration. Now, in 1921 these carriers came back to the Georgia and Alabama Commissions in response to a citation, and proposed another general revision of rates, and proposed a different scale of rates on each particular commodity, and it is that proposal which they stated they expected to apply state and interstate, and which they have applied in various and sundry interstate adjustments, that we now call their present proposed rates, and we refer to the one they previously proposed as the original proposed rates. That is what I mean by present proposed rates (Rec., 128).

By Mr. Watkins:

Q. May I ask while you are on that, how he got the carriers' original scale, the 1907 scale?

A. I have just stated it.

Q. No, you didn't state, you stated they offered it, now did they offer this specific scale, or did they offer Class P rates with a minimum of 36,000 pounds, and have you reduced the carload to a per ton charge, is that it?

A. No sir, not in Alabama, Mr. Watkins; I went back to our original records, and I have got that original scale just as it was proposed here, I also show it as it has been increased by the general advances and reduced by the reduction, they are both there (Rec., 129).

[fol. 35] Q. There are no specific scales in Alabama?

A. Yes sir, I understand there is also a specific scale in Georgia, they told us it was there, that is the basis on which they asked us to act (Rec., 129).

Mr. Gwathmey: I don't for a moment want to ask any questions that infringe on the Commissioner's idea about eliminating argumentative discussions, but I would like to

ask Mr. Aldredge to state briefly if he can just what the purpose is of this extract from certain testimony taken eight years ago, or in 1918, in some case before the Alabama Commission (Rec., 129).

Mr. Cotterill: Mr. Gwathmey, would it serve your purposes just as well if I assume the responsibility of answering as to the purposes of that exhibit? (Rec., 129.)

Mr. Gwathmey: Yes.

Mr. Cotterill: The data contained in that exhibit is construed as an admission against the carriers' interest, so far as concerns the issues of the present day (Rec., 130). It explains the circumstances, in the view of the carriers, surrounding their proposal as to the original scale (Rec., 130).

By Mr. Gwathmey:

Q. Mr. Aldredge, when this 1917 scale was proposed to the Alabama and the Georgia Commissions, was it not understood and stated on the carriers' behalf that those scales were proposed to be used as minima in revising the interstate rates? (Rec., 131.)

A. Do you want my recollection on that?

Q. Yes.

A. No, I think they were as maxima.

Q. You are speaking, however, from recollection and without having investigated that record, I take it, for the purposes of this present inquiry?

[fol. 36] A. I did not go into all the details of that record, but I participated in the case, and I have a pretty fair recollection of it (Rec., 131).

It is a fact that the scale suggested by the Louisville & Nashville Railroad is higher than the scale set forth on sheet 4 as the carriers' scale before the Alabama Commission. The Louisville & Nashville did not make any proposal in 1917 (Rec., 132).

Mr. Mohr objected to page 22 of Exhibit 1 and moved that it be stricken from the record, in which motion Mr. Gwathmey, Mr. Martin and Mr. Walker joined.

After discussion of the argumentative features of the page and a ruling by the Commissioner that certain portions of it were eliminated, Mr. Cotterill withdrew sheet No. 22 from the exhibit (Rec., 135).

By Mr. Martin:

Q. May I ask for whom you are appearing in this case as a witness, Mr. Aldredge?

A. I show it on the exhibit.

Q. Well, are you testifying here on behalf of the Alabama Commission? The reason I ask, I understand you are officially connected with that body.

A. Sure, partly on behalf of the Alabama Commission.

Q. And this is the testimony of the Alabama Public Service Commission?

A. This is my testimony; the Commission does not testify.

Q. Is it approved by the Alabama Public Service Commission?

A. They told me to appear here.

Q. Did they approve these figures?

A. I did not submit them to the Commission for official action.

(Witness temporarily excused for cross-examination later.)

[fol. 37] A. J. Rise testified as follows:

I am traffic manager for the Birmingham Slag Company of Birmingham and the Montgomery Gravel Company of Montgomery (Rec., 139).

Exhibits which have been distributed to the parties and to the Commission and which I have before me were prepared by me or under my direction and are correct, excepting for two errors:

On Exhibit No. 3, under the columns headed "Proposed", opposite distance of 130 miles, the rates should be $1.05 and 95 cents, instead of $1.25 and $1.15. On Exhibit No. 13, the second line opposite Lineville, the last column should show minus 15 instead of plus 15.

Cross-examination.

By Mr. Gwathmey:

Q. Do I understand that these exhibits are filed in support of the complaint of the supporting interveners, as stated in the caption of the exhibits? (Rec., 140.)

A. Yes sir.

Q. In your opinion are the rates on slag from Birmingham unduly favorable to the Birmingham shippers, in comparison with the rates on sand and gravel from Montgomery? (Rec., 140.)

Mr. Cotterill: The question in the way it was phrased asks for a matter of opinion, and I think to be consistent I must object to the question.

Mr. Gwathmey: I understood him to qualify as an experienced traffic man (Rec., 140).

Mr. Cotterill: No, I don't think he was qualified as that at all.

Mr. Gwathmey: If Your Honor please, the same question came up in connection with the testimony of a previous witness who was connected with the Birmingham Slag interests, at that time the question was raised and settled, as I understood it, as to whether there is any issue here as to [fol. 38] the reasonableness of the rates on slag from Birmingham to the destinations covered by these complaints. I don't understand that any complaint brings that question into issue. This witness states that he is appearing as an intervenor in the complaint filed by the Roquemore Gravel Company, a concern located at Montgomery. That complaint alleges that the rates from Birmingham on slag are unduly preferential to the Birmingham shippers, and prejudicial to the shippers from Montgomery. If this witness has been introduced, as his counsel says he is, as the witness in support of the complaint, I submit that I certainly have the right to ask him as to his position and his opinion as to whether the allegations of that complaint are sustained? (Rec., 141.)

Mr. Cotterill: If Your Honor please, if he had been content to prepare the data it would have been my right to have picked up any man on the street and brought him here to prove certain facts which are admittedly relevant to the issues in the proceedings. That is all this witness has done. At the top of each exhibit, there is a designation "Complainants" and supporting intervenors' exhibit." That has no significance other than consistency with the wishes of the Commission, in order that the inspiration and source of the exhibits be identified as between the parties to the case, that notation was put uniformly on all of

the exhibits. I see no connection between that designation as to which side of the case the exhibits are being presented for on the one hand, and the question of which this witness as an officer of one of the interested companies contends for or believes on something as to which he has an opinion (Rec., 141-142).

Mr. Gwathmey: I have a right to have this witness make a statement on this subject since he has qualified as an officer of the Birmingham Slag Company and appears as a witness in support of the claim of discrimination in favor of his own company (Rec., 142).

[fol. 39] Mr. Cotterill: He has not appeared as a witness in support of anything, he has come to prove certain facts. He proved the making of these exhibits (Rec., 142).

Mr. Gwathmey moved that all of the exhibits be excluded on the ground that they have not been presented by any duly qualified witness. Mr. Martin and Mr. Mohr joined in the objection.

Mr. Cotterill: The witness has simply testified that the exhibits were prepared by him and under his direction; the question of qualification has not entered into it at all (Rec., 143).

Commissioner Lewis: I have glanced through the exhibits and they seem to be a presentation of a great deal of statistical matter, the present and proposed rates, etc. We will accept these exhibits and you can cross-examine the witness on them.

Exhibits 8 to 27 were thereupon received in evidence.

Mr. Burchmore reserved an objection to four pages and the exhibits were received subject to such objections, to be made specific thereafter (Rec., 144).

Mr. Burchmore objected to Exhibits 17 and 19, as being taken from an unofficial source, being an extract from an exhibit in another case. Consideration of the objection was deferred until later by stipulation (Rec., 145).

Mr. Burchmore objected to Exhibit 20, being a comparison of specific commodity rates from Memphis to points in Mississippi and Tennessee, on the ground that the cases on hearing do not involve any averment of discrimination or discrepancy in the rates from Memphis to points in Mississippi versus Memphis to points in Tennessee, being en-

tirely outside of the issue in these cases. He made similar objection to Exhibits 21 and 22.

[fol. 40] Mr. Cotterill stated that the exhibits were presented simply for comparative purposes (Rec., 146).

Mr. Gwathmey: Mr. Commissioner, I really don't want to appear in the attitude of a continuous objector, but this method of proceeding which Mr. Cotterill has seen fit to adopt here forces us to raise these questions as quickly and as promptly as we can and perhaps do it in a somewhat scattering manner. Now, here is a feature of this set of exhibits that I notice right now, Exhibit No. 15 (Rec., 147).

Exam. Waters: Are you gentlemen going to cross examine this witness later?

Mr. Burchmore: I was not going to do it.

Exam. Waters: Why are you making all these objections?

Mr. Burchmore: Because I am sure they intend an attack on us not covered by the complaints, and which I want to defend against.

Exam. Waters: You are going to cross examine him later?

Mr. Buchmore: No sir, I am not going to ask him a question unless I am forced to do so by the tactics of other people here, that I can't help; but I make this objection to Exhibit No. 21, and I also want then to make the same objection to Exhibit No. 22, and if the Commissioner will rule, I will accept his ruling or make an exception thereto, 20, 21 and 22.

Mr. Cotterill: My reply is the same, those exhibits are tendered for comparative purposes (Rec., 147).

Commissioner Lewis: Mr. Cotterill having stated that Exhibits 20, 21 and 22 are limited to their use for comparative purposes, with such a limitation on the record, we will accept them (Rec., 149).

Mr. Gwathmey: Certain of these exhibits are apparently irrelevant because they relate to rates that are not at issue [fol. 41] in the case. Exhibit No. 15, for instance, shows proposed rates fom Montgomery, Alabama, to various points in that state. I do not understand that the general level of intrastate rates in Alabama is at issue here (Rec., 149).

Mr. Cotterill: The title to Exhibit 15 is susceptible of misunderstanding which should be cleared up. It is intended only as a comparison between certain charges prescribed by the Alabama Commission for various distances, on the one hand, and a certain mileage scale proposed by the complainants in this case within the scope of these cases. The rates from Birmingham are here in issue under Section 3 (Rec., 150).

Mr. Cotterill: I intended Exhibit 15 as a comparison between the mileage scales proposed by the complainants and those published by the Alabama Commission. The same is true of Exhibit 26. Does that meet your objection?

Mr. Gwathmey: If the issues are clearly understood, I have no objection to putting in the proposed rates in that way.

The Birmingham Slag Company has been in existence twelve years or longer and has been continuously after the carriers for rates on slag out of the Birmingham district. The sand and gravel business at Montgomery is of comparatively recent origin. Their big production started about the middle of the war. We have commodity rates on slag out of Birmingham district and there are not rates on sand and gravel out of Montgomery on a relative basis. We are absolutely in agreement with the complainants that the shippers of gravel are entitled to rates on a relative basis with slag, all conditions being approximately the same (Rec., 154).

Witness temporarily excused, for cross-examination later.

[fol. 42] J. L. Griffith, recalled, testified further as follows:

Exhibits 28 to 33 were prepared by me and the facts therein contained are correct (Rec., 155).

Mr. Gwathmey requested that cross-examination on the exhibits be deferred to give counsel an opportunity to examine them. This was agreed to (Rec., 155).

Commissioner Lewis: It seems to me, Mr. Cotterill, it would be enlightening to all parties if the witness would

state his purpose in the introduction of these exhibits; we are pretty much in the dark ourselves.

Mr. Cotterill: It will be observed that at the top of each exhibit there is a description of the contents which was thought to be informative as to the purposes of each exhibit (Rec., 156).

Mr. Cotterill: When it come to a statement of contentions, or as to a conclusion, I was going to say that had there not been excluded the explanatory comment which was contained in Mr. Aldredge's exhibits, this heading would probably easier be understood; suffice it to say that the exhibit indicates existing rates, as described on the face of the exhibit. Now then, as to what conclusions the complainants draw from the evidence as a whole, it has been indicated that as to the items of gravel, washed, slag and crushed rock, it is their conclusion that there should be a similarity of charge (Rec., 156). As to clay gravel, sand and chert, the conclusion was that a rate differential of a specific amount ought to be made (Rec., 157).

Mr. Mohr requested an answer to his former question, propounded when the witness was first on the stand (Rec., 113), as to the disparity, if any, of rates into this territory from Chattanooga, and after discussion between counsel, the witness testified:

[fol. 43] This Exhibit, No. 28, was prepared to show discrimination against Chattanooga shipping into the other territories, and does not show what we propose. I had exhibits prepared on that, but eliminated them to avoid duplication, as similar exhibits had been prepared by other complainants. It will be noted from the exhibit that we have considerably higher rates from Chattanooga to points on the N., C. & St. L. Railway in Georgia shown in Column 1, than apply within Georgia to other points of like distance. The same holds good of rates shown in columns 11 and 12, which apply from Chattanooga to points on the Central of Georgia and Southern Railway, respectively (Rec., 160).

The rates shown in columns 2, 3, 4, 5 and 6 on Exhibit 28 do not apply from Chattanooga stations on the Atlanta Division (Rec., 161).

There are from Chattanooga a great many specific stations like Dalton and Rome, Georgia, for instance, to which

there are specific rates in effect that are entirely different from those shown in column 1 (Rec. 162).

The rates shown in columns 1, 11 and 12 apply from Chattanooga only where there are no specific rates in existence (Rec., 162).

We contend that the Georgia rates have created discrimination against Chattanooga at points in Georgia. We are hurt at any point in Georgia where those rates apply. I could not begin to enumerate offhand the points to which we were shipping in Georgia before the Georgia rates went in. The rates from Chattanooga to Atlanta are on the same level as the rates from Georgia points to Atlanta (Rec., 163).

We do not ship any tonnage to Macon. I could not say whether we do business at Griffin or Athens (Rec., 164).

There are numerous points on the Central of Georgia, for instance, between Chattanooga and Rome, and local points on the N., C. & St. L. Railway, where there are no through rates published and they are on a considerably higher scale [fol. 44] (Rec., 164).

All movements over the N., C. & St. L. Railway from Chattanooga, both southward into Georgia, and north into Tennessee, are interstate, excepting for four or five miles out of Chattanooga, because the N., C. & St. L. Railway after it leaves Chattanooga dips into Alabama on its way northward (Rec., 164).

Cross-examination of the witness was deferred.

Mr. Cotterill: That is all the witnesses for the complainants. When our minds are fresher tomorrow, I shall have a motion to make with respect to the prodution of some data desired to be used by the complainants, but as to the witnesses, this is all the witnesses the complainants will have on the direct presentation of the case (Rec., 165).

[fol. 45] February 17, 1926.

H. T. Youmans testified as follows:

I reside at Ellenton, South Carolina, and I am Superintendent and General Manager of the Ellenton Gravel Company, producing clay gravel (Rec., 168).

Ellenton is on the Charleston & Western Carolina Railway, 22 miles out of Augusta, on the Port Royal Division (Rec., 168).

There are other operators in this general territory. There is one nine miles below us at Steele's Creek, South Carolina, and another on the Savannah River about 15 miles above us. Both points are on the Charleston & Western Carolina Railway (Rec., 169).

Our plant is four or five miles from the river, which forms the Georgia state line (Rec., 169).

Our company has been operating at Ellenton about two years and has been operating for eighteen years on this line of railroad (Rec., 169).

In the years prior to 1925, the company shipped any quantity of sand and gravel from its plant into the state of Georgia reaching the coastal section, Savannah, Brunswick, Waycross, Jesup, Valdosta, and some as far as Quitman. We have been shipping gravel into Georgia for fifteen or sixteen years, the heaviest shipments being in the last six or seven years, since the State Highway Department has been functioning (Rec., 170).

We cannot ship gravel into Georgia at the present time. We stopped shipping into Georgia April 1, 1925 (Rec., 170).

During March, 1925, I had an order from the State Highway Department, for something over 20,000 tons and was shipping at the rate of 700 to 800 tons daily, about 15 to 18 [fol. 46] cars. On March 27, I had a letter notifying me that the rates would be lowered April 1st by the Georgia Public Service Commission sufficiently to make the Georgia gravel man lower on a delivered price, and it would be necessary to cancel my order, which they did. I have the telegrams and letters in my pocket, the original signed order and the letters canceling the contract (Rec., 170).

It made a difference of 25 cents a ton in the delivered price as compared with the price of shippers located in the State of Georgia (Rec., 171).

Other operators along the line of the Charleston & Western Carolina Railway had the same experience. They too have been excluded from Georgia (Rec., 171).

If our rates from our plant interstate into Georgia are on the same level with the rates intrastate in Georgia, we can ship to some parts of that state. We advocate a parity of the rates, interstate as against intrastate (Rec., 171).

I have been in business for eighteen years and as the rates now stand, I am barred from the states of South Carolina and Georgia. I am an equal partner in the plant at Ellenton and have $30,000 tied up in it. My competitors have the advantage of me in Georgia and South Carolina and it looks like I will be forced out of business. If there was any gravel going west from Carolina, I would have some advantage over my competitors, but I only have 22 miles of railroad until I get into Georgia, and they have me shut out of the west. I tried all last year to get to Aiken, S. C., and Edgefield and different parts, but we can't go through Augusta. There is no gravel moving that way.

Cross-examination:

[fol. 47] I participated in a hearing before the Interstate Commerce Commission at the time when the railroads issued tariffs to increase my rates from Charleston & Western Carolina points in Georgia and Florida. My rates were substantially increased. They have been increased two or three times. The rates that I am operating under today to points in Georgia are the rates that were put in in that case (Rec., 173).

The Southern Paving Gravel Company is located at Beach Island, South Carolina. They are shipping very little material. They quit about the same time I did, shipping into Georgia (Rec., 174).

After the decision in the C. & W. C. case, we sold out our plant. The freight rates affected us and we had other reasons also (Rec., 174).

The mileage scale has been in effect in South Carolina since 1922, but it was not applied on the C. & W. C. until 1924, after that I sold out my holdings at Steele's Creek and moved to Ellenton. I haven't any competition except at Steele's Creek and W. N. Todd, Myers Hill, S. C. (Rec., 175).

I understand this mileage scale has been in effect in South Carolina since 1922, but it wasn't applied on the C. & W. C. until 1924. The mileage scale was applied 60 or 90 days after we moved to Ellenton. We have two miles of standard railroad track, a standard locomotive engine, 150 acres of property, with about 50 acres of gravel. When I began to load, I found that the mileage scale had been

applied, and could not ship, because of this difference of 10 cents per ton, to customers to whom I had been selling for eighteen years (Rec., 176).

The rates from our plant to points in Georgia are higher than under the Georgia scale (Rec., 177).

[fol. 47-a] As to whether I would rather have applied from my plant the basis between Georgia points, or the rates which are now in effect and which are on a higher basis: I would rather have the lower rates. I would probably do some business if I had a competitive rate to get into Georgia either on the South Carolina scale or the Georgia scale. I don't want any advantage over any of my competitors but I don't think I should be shut out of business after being a shipper on this line of road that shipped the volume of tonnage that I have. The records will show that I have shipped as far as Waycross, Ga., as much as 1100 or 1500 cars in one shipment. I have some through rates from my stations to Seaboard Air Line points. Any rates that I can ship into Georgia on is the same importance to us in South Carolina. Those rates were ordered in by the Interstate Commerce Commission in that last decision (Rec., 177).

[fol. 48] I have a list of destinations on the Southern and Seaboard Air Line. In South Carolina we had a stretch of practically 75 miles of state highway. They were figuring on using clay gravel and I understood I might get some of the business. There were some important shipping points on the Seaboard. I went to Mr. Williams of the C. & W. C. Railroad to see if we could get in touch with the Seaboard to put us in some rates where we could do some business, because at present we have no rates, and we can't (Rec., 178).

The selling price of our material is 35 cents a ton f. o. b. the pit (Rec., 179).

Mr. Williams promised to handle this matter with me and I think discussed it yesterday with the Seaboard Air Line man. It seems if these rates are put in, there will probably be some difference of 5 or 10 cents between points on the Seaboard and our pit in the Carolinas. That 5 or 10 cents will knock me out again (Rec., 179).

I ship nothing but clay gravel (Rec., 180).

I have the original order for the 20,000 tons and the cancellation of the order which I would like to display for somebody's inspection. The letter cancelling the order is

dated April 1, 1925, and is from the State Highway Engineer (Rec., 180).

Under the rates which I now have I cannot meet competition even in South Carolina, neither can I meet it in Georgia on account of this low scale in Georgia since April 1st. In Georgia, I have from 11 to 15 cents difference because I have to deliver at job around Savannah and Brunswick and my competitor has 10 to 15 cents advantage of me (Rec., 181).

My only competitors are Mr. Todd at Myers Mills, South Carolina, on the South Carolina side, and Mr. Graves, on the Georgia side. My South Carolina competitor has the advantage of me in South Carolina and my Georgia com-
[fo. 49] petitor in Georgia (Rec., 181).

My production for the last two or three years has been from 2,000 to 3,000 cars. It has gone as high as 5,000 cars in one or two years (Rec., 182).

I have been in business eighteen years and have been shipping to the State Highway Department since they were organized. Before that I shipped to the county commissioners. Prior to April 1st, I had an advantage over the Georgia producer, Mr. Graves, to some of the coastal points around Savannah and Brunswick. That was where my principal movement was. My rate to Waycross was at one time $1.02. It is now $1.49. At one time it was on a yardage scale, per cubic yard, and now it is on a tonnage basis. Mr. Graves is nearer Waycross, there is not much difference in our mileage. I could not say whether Mr. Graves has ever had a rate as low as $1.02 (Rec., 183).

Mr. Graves had the advantage of me prior to April 1, up in this Macon territory and on the Georgia Railroad and down to Valdosta. He probably has some advantage in distance. I have not searched the distances. All I am asking is to be placed on a parity with my competitors (Rec., 184).

Mr. Graves is in business at Norris, Georgia, on the Georgia Railroad. He had no advantage of me at Savannah prior to the change; my rate now is $1.17 and his is $1.20. That is the only point in Georgia where I have an advantage at this time (Rec., 184).

I appealed to the South Carolina Commission for relief in regard to my intrastate South Carolina situation.

They stated to me that this mileage scale had been in effect in South Carolina since 1922, and they couldn't do anything. Id did not ask for a hearing (Rec., 186).

Witness excused.

[fol. 50] J. H. Brown testified as follows:

I am in the sand business, operating in the name of Central of Georgia Sand Company, with pits at Howard, Georgia, on the Central of Georgia Railway and at Greenfield, on the Atlanta, Birmingham & Atlantic Railway (Rec., 187).

Most of our shipments go to Birmingham; I should say about 95 per cent (Rec., 188).

The average selling cost of our sand f. o. b. cars at the pits in 1925 was 22.5 cents a ton. Our profit on that basis is about 7 cents, not including the value of the sand in the bank. I think the sand in the bank is worth about $1.00 a car or 2 cents a ton. On that basis, our net profit at the prevailing price has been about 5 cents a ton (Rec., 188).

We have the same rates into Birmingham as are now in effect from Jackson's Lake and Montgomery, Alabama. This parity has existed for many years and our sand business has been built up on it (Rec., 188).

A differential of as much as 5 cents per ton in the same rates, from Jackson's Lake and Montgomery, as compared with Junction City and Howard to Birmingham, would probably prohibit us from shipping to Birmingham (Rec., 189).

I think most of the sand we ship to Birmingham is used by the steel plants, moulding, such as the Schloss Company and the Tennessee Coal, Iron & Railroad Company. It is used and specified for road building purposes (Rec., 189).

We have two locomotive cranes. We load open top gondola coal cars of all kinds, that is, the empty coal cars that are returned to the mines for being loaded. If they do not get sand they go back empty (Rec., 190).

We wash a small amount of our sand, about 6 cars a week is washed for special purposes. The balance of it we dig right out of the bank and load right into the cars. It is the sole product of our plant, not a by-product (Rec., 190).

[fol. 51] Our rate to Birmingham is 79 cents per ton. It has been in effect for quite a while, five or six years, Prior to that time it was 52 cents (Rec., 191).

Our competitors are located at Montgomery, Jackson's Lake and Prattville Junction. Our sand is used for moulding purposes, a good deal of it is, but not exclusively. I am not familiar with any other producing point that ships sand that is suitable for moulding purposes (Rec., 191).

The country around Howard, Georgia, is the poorest land in the State of Georgia, so poor that trees won't grow there. If it wasn't for this industry we would have to move. The sand industry at Howard is the principal source of revenue for the people. There are two little grocery stores, but they don't do much business (Rec., 192).

I have been operating at Howard since April, 1903. We have about $30,000 tied up in the investment, composed of two locomotive cranes, and approximately 3 miles of railroad track (Rec., 192).

The population of Howard is about 250 (Rec., 192).

We compete with Montgomery and Jackson's Lake in shipping to Birmingham and we are compelled to meet the prices quoted at Montgomery and Jackson's Lake (Rec., 192).

I do not know that our sand is used exclusively for moulding purposes even when shipped to pig iron furnaces, because they use sand for other purposes (Rec., 193).

We have had a parity of rates from Junction City and Howard to Birmingham, with Montgomery and Jackson's Lake for a number of years, and our investment and business has been built up on that parity (Rec., 193).

Q. The complainants in these cases propose a scale which would result in $1.20 from Junction City to Birmingham, and 85 cents from Montgomery and Jackson's Lake to Birmingham, a difference of 35 cents; could you operate [fol. 52] with a 35 cents differential?

A. No sir, and not on a 5 cents one I don't think?

If we have the same rate I figure we will do some business. If the rate from Montgomery to Birmingham was $1.08 instead of 79 cents, then I think we could operate on a rate of $1.08 from Junction City to Birmingham (Rec., 194).

We ship anywhere from 1,000 to 3,000 cars a year. Last year we shipped about 1,100 cars to Birmingham, and about

250 cars to other points. It was a very dull season; we did not do much (Rec., 194).

The distance from Junction City to Birmingham is 213 miles by the A. B. & A., and 197 miles by the Central of Georgia. The distance from Montgomery is something like 100 miles (Rec., 194).

There is a difference in price of about $1.00 a ton between washed sand and bank run sand. We get $1.25 for washed sand f. o. b. cars, and about 22 cents for bank sand (Rec., 194).

We ship a very limited amount of washed sand. It is used by the American Radiator Company only. We have a small contract, about a car a day for them. In addition to the other investment, we have about $6,000 included in the washing plant which I did not figure when I was talking about the investment in crane and track. We have that washing plant for just one small contract (Rec., 195).

Witness excused.

[fol. 53] CHARLES W. MOORE testified as follows:

I am in the sand business at Junction City and at Morningstar, on the A. B. & A. Railroad (Rec., 195).

We ship from those pits unwashed sand to Birmingham. The average selling price we received for 1925 was 22.5 cents. The cost of that sand loaded on cars at the pit was approximately 18 cents a ton, which leaves a net profit of less than 5 cents a ton (Rec., 196).

About one-third of our tonnage moves into the Birmingham market. It is used almost exclusively for construction purposes. In 1924 we shipped a little pig bed sand, but there was practically none of it shipped in 1925 (Rec., 196).

Our rates are on a parity with the rates on sand moving from Jackson's La. and Montgomery into Birmingham and have been at all times since our business started (Rec., 196).

A differential of as much as 5 cents per ton in the rates from our pits to Birmingham as compared to Montgomery pits to Birmingham would affect me very materially. I don't think we could continue to exist with a difference of as much as 10 cents a ton (Rec., 197).

Sand is the only thing we produce. Our present rate to Birmingham is 79 cents and the same from Montgomery (Rec., 197).

Cross-examination:

We have a considerable investment in sand pits and the necessary machinery. This investment was made in a measure on the parity of rates to Birmingham. Of course, Birmingham is not our only destination. We have had a parity of rates for a number of years with Jackson's Lake and Montgomery (Rec., 198).

On the sand we sold in 1924 for pig moulds, we had to meet the quotations of competitors including the Montgomery sand. The Montgomery people practically control the price in the Birmingham market (Rec., 198).

[fol. 54] If the rate from Montgomery and Jackson's Lake to Birmingham should be $1.08, instead of 79 cents, and our rate should be $1.08, we would be on the same parity as today and could do business. Of course I am interested also in as low a rate as possible. However, I feel like with an equal rate with Montgomery we could operate (Rec., 200).

Sand is produced in South Georgia territory generally. Points like Waycross, Valdosta, or Cordele can get sand sufficient for their demands in the immediate vicinity. Therefore, we would not have occasion to ship sand from Junction City to South Georgia territory only in exceptional cases (Rec., 200).

About one-third of our sand now goes to Birmingham. Practically all of the rest goes to Atlanta (Rec., 200).

I do not know whether a person not familiar with the sand business could tell whether a car loaded with sand was washed sand or bank run sand, because there are different grades of bank sand. Some of it is very clean and pretty and it is the same way with washed sand (Rec., 201).

The two materials take the same rate today (Rec., 201).

Our present rate to Atlanta is 90 cents, the distance is 108 miles. I don't know the rate from Montgomery to Atlanta. Mr. Browder stated $1.10 (Rec., 201).

Witness excused.

[fol. 55] J. H. ALDREDGE, being recalled for cross-examination, testified as follows:

The excerpt which is filed as sheet 3-A to my Exhibit No. 1 was not introduced for the purpose of sustaining my recollection that the rates which the carriers proposed in 1917 to the Alabama Commission were intended for general interstate application (Rec., 202).

It is my understanding of that proposal that it was a complement of the general revision of the southern interstate rate structure which had been begun on fourth section principles, and which has not yet been completed (Rec., 203).

Mr. Gwathmey requested Mr. Aldredge to furnish an extract from the record in the case in question to sustain his recollection of the carriers' proposal (Rec., 203).

Mr. Burchmore objected to the admission of the requested excerpt from testimony as contrary to Rule 13a of the Commission's rules of practice. The objection was overruled (Rec., 105).

Mr. Aldredge agreed to present within ten days an extract from the transcript or from the briefs and other papers in the record. The objection was overruled and the offer was allowed, Mr. Burchmore noting an exception. The matter in question was subsequently sent to the Commission by Mr. Aldredge with letter dated February 26, 1926, was filed of record, and follows Exhibit No. 244 in the copies of exhibits as certified by the Secretary of the Commission in his certificate of April 1, 1930 (Rec., 209).

On sheet 4 of Exhibit 1, the carriers' scales as originally proposed are brought down to date by applying first the general increase under General Order No. 28 of the Director General of Railroads, which was 20 cents per ton, [fol. 56] then the second 25 per cent increase under Ex Parte 74, and then the 10 per cent reduction under Reduced Rates, 1922. I did not personally make the compilations in this exhibit, but I checked it with the scale which is now in effect in the Meridian territory, that has been subjected by the carriers to those same changes, and they are the same (Rec., 210).

Mr. Gwathmey called attention to some discrepancies and the witness agreed to recheck sheet 4, as well as sheets 6 and 9 of the exhibit (Rec., 211).

The rates shown on sheet 7 of exhibit 1 apply only on washed gravel and the scale shown on the left hand side under the column headed "Carriers' original proposed scale in 1917 and 1918", is the flat scale without any subsequent plusing or reductions (Rec., 212).

Through the exhibits there appears the term "Carriers' present proposed scale". That means the scale which has been proposed by the carriers to the Georgia and Alabama Commissions, and it constitutes their standing proposal today which they say and said would be used in making your interstate revision (Rec., 212).

This explanation applies throughout the exhibit wherever I have used the word "present" (Rec., 213).

On sheet 4 of Exhibit 1 we have undertaken to bring the carriers' original scale down to date and Mr. Gwathmey says that a few errors have crept in (Rec., 213).

Sheet 15 of Exhibit 1 shows under the heading "Rates under carriers' proposed scale, extended beyond 400 miles", rates which are an extension of the standard scale and not the rates which the carriers are actually proposing to Florida points. It is just a comparison with what the standard scale would produce if extended to these distances and applied in Florida (Rec., 214).

I did not know that the carriers were proposing in establishing rates into Florida, to use certain proportional rates to Jacksonville and certain proportional rates beyond [fol. 57] Jacksonville, combining the two factors to construct the through rates to points in the Florida peninsula, but it does not surprise me if they are. I assumed that they would perhaps do it in the class rates (Rec, 214).

The distances shown in the first column on page 15 of Exhibit 1 were figured via the routes shown on the next page. I am not familiar with the extent to which the movement into the peninsula of Florida would be via the routes shown. They are supposed to be the short-line routes (Rec., 215).

I know that the Atlantic Coast Line has its own line from Montgomery to Jacksonville, and I assume Mr. Gwathmey is correct, that the distance is something like 390 miles, or greater than the entire distance shown on my exhibit from Montgomery to St. Augustine. But I do not think the public should be forced to pay rates around any circuitous routes. I think they ought to have the benefit of the short-line workable route (Rec., 215).

I think the Atlantic Coast Line from Montgomery to Jacksonville and the route made up of the Central of Georgia to Dawson, the Seaboard Air Line to Albany, and the Atlantic Coast Line thence to Jacksonville, both are workable routes; however, I think the Commission is going to settle this question of routes in the Southern Class Rate Investigation (Rec., 216).

Mr. Cotterill: I believe we are getting a little bit into the domain of debate. The exhibit purports to show the routes which constitute the short-line mileages. The question whether these short-line mileages shall be observed in prescribing the rates is one of argument (Rec., 216).

Mr. Gwathmey: I am questioning the propriety of the distances shown on the exhibit.

Mr. Aldredge: They are the short-line distances as near as we could possibly figure them by open routes (Rec., 216).

[fol. 58] The distance from Montgomery to Tampa is figured via Atlantic Coast Line to LaCoochee and the Seaboard Air Line. That is the short line. We checked the tariffs and they show a physical connection between the Atlantic Coast Line and the Seaboard Air Line at Lacoochee (Rec., 216).

Exam. Waters: Are you questioning whether these rates apply over these routes?

Mr. Gwathmey: No, I question whether these rates shown on this exhibit will apply at all, because they are not the rates we are proposing, but I assume that is understood, we are not proposing the rates shown on this exhibit (Rec., 217).

Exam. Waters: Do the existing rates apply over the routes shown?

Mr. Gwathmey: Mr. Mesengill of the Seaboard Air Line, who is present, tells me they do not apply over the routes shown on the exhibit to points south of Jacksonville. We will try to show that later (Rec., 217).

Mr. Aldredge: That is the way the rates are made to Florida, mostly, it is Jacksonville combination (Rec., 217).

It is generally true that at present rates from all other shipping territory to points in the peninsula of Florida are constructed in exactly the same manner that the carriers used in constructing rates from Montgomery, that is, by

combination of factors to and beyond Jacksonville (Rec., 218).

In the Meridian Case, to which several of my exhibits refer, different rates were proposed by the carriers on different groups of these commodities. One scale was proposed and adopted and is now being applied on sand and gravel, and slag and crushed stone were given a different basis, to the best of my recollection. I examined into that closely in times past. Crushed stone and slag were among the same rates as common brick and the common brick rates have since been changed (Rec., 219).

[fol. 59] By Mr. Gwathmey:

Q. Now, in working out the scale which you have proposed, based upon the Meridian scales, isn't it true that you have taken the scale then used on low grade commodities such as sand, and used it in constructing the scale which you are now proposing on crushed rock and slag?

A. I don't want to make an affirmative answer to that question just as you have put it; we took the scale which you proposed, and which was approved and applied on gravel, which includes all kinds of gravel and sand, and used that as a basis regarding it sufficient to eliminate the odd cents and the irregularities that had crept into it, and used that on our description No. 1, which included washed gravel and slag and crushed stone, and we proposed a lower scale on sand; we modified it to that extent (Rec., 219).

By Mr. Gwathmey:

Q. The differentials or differences of the different groups which you are now proposing are shown, as I understand it, on these Sheets Nos. 20 and 21, under the captions Description No. 1 and Description No. 2?

A. Yes sir.

Q. Will you just state briefly the basis of the differentials between the commodities as shown under those respective descriptions? What is the ground of distinction in asking for a difference of rates on the commodities shown on Description No. 1, as compared with those under Description No. 2?

Mr. Cotterill: I think that comes in the realm of argument.

Exam. Waters: We think it does.

Mr. Gwathmey: It is a question of fact.

Mr. Cotterill: It will be discussed in another way and through other sources (Rec., 220).

[fol. 60] After extensive discussion by counsel, with statement by the Examiner that the Commission desired light on the question, and reference by Mr. Cotterill to a portion of the exhibit previously withdrawn from evidence, record 220-227, the witness answered:

The differentiation between the two groups of commodities is based upon differences in values, differences in competitive conditions, and differences in the ability of the commodities to stand a transportation charge and move freely. The grouping of the commodities into groups is based upon a similarity of transportation conditions, similarity of uses, and keen competitive conditions, and similarity of values (Rec., 228).

Mr. Gwathmey objected to page 28 of Exhibit 1, which is a compilation relating to the rate of return of carriers, on the ground that under the decisions of the Supreme Court, the exhibit is irrelevant (Rec., 228). He did not request a ruling on the objection and none was made.

Page 22 of Exhibit 1 was withdrawn. Portions therefrom read in evidence by the witnesses were stricken on motion of Mr. Martin (Rec., 229).

The data as to volume of movement on sheet 2 of Exhibit 1 bears on the scale that the complainants have proposed in this case. I cannot answer yes or no, without qualification, the question if the volume of sand and gravel in the south were twice as great as indicated on the exhibit would a slightly lower scale be warranted than we have proposed. Assuming that the volume of other traffic was held up to its present proportions and the transportation conditions continued as they are, I think that it would (Rec., 230).

By Mr. Mohr:

Q. Now, assuming that the same amount of tonnage on other commodities would be the rule in the future, and the tonnage of these particular commodities increased 100 per cent, what would be your answer?

A. I would still say it would probably justify a somewhat lower scale (Rec., 231).

[fol. 61] I propose this as a reasonable scale, in my judgment, and I do not base this scale entirely upon that theory. The movement of these commodities has practically doubled in southern territory in three years (Rec., 231).

It is my contention that the level of the rates has restricted the production or movement of sand and gravel (Rec., 232).

Mr. Mohr called attention to the fourth column on sheet 6 of Exhibit 1, wherein the elimination of fractions, amounts as much as 7, 11 and 12 cents, had been written off in eliminating the odd cents. The witness replied that it was necessary to regrade the scales for consistency (Rec., 233).

On sheet 18 of Exhibit 1, showing the extent of the discrimination against Montgomery in favor of Georgia points, is shown a rate of $1.08 from Montgomery to Columbus, with $1.00 from a Georgia point to Columbus. This would be from any shipping point in Georgia coming within the range of that distance. I do not know whether there is a shipping point in Georgia within that range of distance (Rec., 233).

By Mr. Mohr:

Q. Now, with respect to the proposed scale shown on sheet 20 of Exhibit 1, in applying this scale, is it the idea of the parties that propose it that it should be strictly adhered to, or if it be shown that there are special particular situations that need attention, do you think they should be dealt with on their merits? I have in mind any special situation that may arise, competitive situations for one thing.

Mr. Aldredge: I think it would be much better to adhere strictly to the scale if it is at all practicable and possible. One of the fundamental thoughts in the minds of the complainants and interveners was to propose such a scale as would make it unnecessary to depart so far from the scale as has been the practice in the past (Rec., 234).

[fol. 62] Possibly there might be instances where some deviation from the scale would be necessary, but I think a deviation ought to be considered very carefully indeed (Rec., 235).

By Commissioner Lewis:

Q. For my own enlightenment, would you apply that answer to the movements to Jacksonville, which now seem to be on a specific rate?

A. Our idea was to apply the scale to the peninsula of Florida with certain differentials superimposed upon the scale, and that would eliminate that combination based on Jacksonville, and make unnecessary the operation of the proportional rates (Rec., 235).

We want one rate straight through. We are proposing that the same principle be observed in extending rates into Florida as has been or will be observed in the Class Rate Investigation (Rec., 235).

I am here presenting in behalf of certain parties a straight distance scale. There may be some practical necessity for grouping points of origin, but that can be taken care of by using the average of the scale without deviating from the general level of the scale (Rec., 236).

It is my thought that this scale should, with that exception, be applied rigidly, regardless of who it helps or hurts. I think that is the general situation of the complainants (Rec., 236).

As I have already explained, the scale that I have here proposed is based upon the scale proposed by the carriers in 1917 for application on sand and gravel with some modifications. I have not shown in any of my exhibits the rates that were proposed by the carriers in 1917 on crushed stone and slag, but I have explained what they were and what the basis was. They were included in the same group with common brick (Rec., 237).

[fol. 63] I did not give any particular consideration in working out our proposed scale to the rates proposed by the carriers on crushed stone and slag in 1917, because those rates in my judgment are all wrong, and the carriers themselves have changed their minds about them and the common brick rates have changed and the conditions have changed generally (Rec., 237).

In differentiating between the rates in descriptions 1 and 2, and using value as one of the principal reasons, I considered that washed gravel in bulk had a range in value between 50 and 90 cents per ton (Rec., 238).

Sand and washed gravel in bulk in mixed carloads was included in the description along with washed gravel because of the manifest discrimination that would happen if you allowed a mixed carload of the higher grade and the lower grade commodity to move at the rates on the lower grade (Rec., 238).

The value we placed on sand in making the description ranged all the way from 10 to 50 cents per ton. On slag, the range in value is about the same as washed gravel. On stone, broken stone, rubble, etc., the range in value in our state is pretty well the same as the other two commodities; I understand it goes higher in some of the other states. On gravel, not washed, 15 to 50 cents a ton, clay gravel the same. I am giving you the range of values that we considered in determining these questions. We saw there was such a difference in the range in values that a differentiation was practical (Rec., 239).

It is true that a great many of the intrastate rates on these materials in the state of Alabama now in effect are actually substantially lower than the scale which the complainants are proposing would produce as applied to the mileages (Rec., 240).

Mr. Burchmore: I do not want to ask any question that might embarrass you in your official position as expert for [fol. 64] the Alabama Commission, but bearing in mind that the intrastate rates in Alabama do not seem as a whole to be involved in this case, I ask whether it is intended that complainants' proposed scale shall actually go into effect intrastate in Alabama if it takes effect in Georgia (Rec., 240).

Mr. Aldredge: I can answer that question, but I cannot find my Commission. I will say that I think undoubtedly those specific rates that you were talking about in Alabama would have to be increased when the revision is accomplished; I have had no other thought all along (Rec., 241).

Mr. Martin in questioning the witness reserved his position of protest that Mississippi intrastate rates are not at issue.

On sheet 17 of Exhibit 1, the distance from Montgomery to Jackson, Mississippi, is computed by what is supposed

to be the direct line via Selma and Meridian over the Western Railway of Alabama, Southern Railway, and Alabama & Vicksburg (Rec., 241).

From Montgomery to Vicksburg, Mississippi, the distance is figured by the same route of the same carriers. To Brookhaven, the distance was computed by the same route through Jackson, then the Illinois Central (Rec., 242).

The Mississippi road construction scales, in next to the last column on sheet 17, are single line scales. I have here compared in every instance a joint haul for a single line. We do not have any joint line scales (Rec., 242).

Mr. Cotterill: Exhibit No. 2 is designed to show a similarity of conditions in the Mississippi Valley, as compared with the conditions in the southeast generally (Rec., 243).

Mr. Aldredge: It is also designed to support the suggestion of the complainants and interveners for an uniform [fol. 65] level of rates within the scope of this investigation in the southeast (Rec., 243).

The first railroad shown on Exhibit 2 is the Illinois Central. The showing relates to the entire line of the Illinois Central, including the lines north of Memphis and west of Chicago. We have no way of separating the line between the north and the south. I wish we did (Rec., 244).

In the classification of the materials, we took into consideration all of the elements of value and competition and what the traffic would bear, etc. We did not give any greater weight to one than the other (Rec., 244).

The value given by another witness, of approximately $1.25 per ton for washed sand, would be high grade sand (Rec., 244).

That example should not control a rate level. There are doubtless little pits here and there that get a pretty high price for their product, but when they meet competition they have to reduce it. I think we ought to consider the average of the tonnage that moves and not the average price of each pit (Rec., 245).

I am not willing to amend the classification of these materials, as shown on sheet 21 of Exhibit 1 by including "asphaltic limestone, broken, crushed or ground". You, Mr. Martin, have a complaint of your own pending involving those rates (Rec., 245).

The transportation characteristics of the various commodities included in my exhibit, excluding those features which I have mentioned of value, etc., are similar. They have similar loading characteristics and similar transportation characteristics. This is with the understanding that I am eliminating in my answer those characteristics which I have mentioned, limiting it to strictly transportation characteristics (Rec., 246).

I think bituminous coal would be similar, too, but it moves on higher rates (Rec., 246).

[fol. 66] On page 2 of Exhibit 1, the average loading of these commodities shown is the actual average as taken from the statistics of the Interstate Commerce Commission on all of these commodities originating within southern territory. I know of no better source of information (Rec., 247).

The classification which is here shown of sand, gravel and stone, in the Commission's statistics, include some commodities of minor importance from a tonnage standpoint which are not involved in this case. I think it includes building stone. These other commodities will load up to the full carrying capacity of the car. There is a long list of these other commodities, but they are of minor importance from a tonnage standpoint (Rec. 247).

I am sure that if the tonnage of these other commodities was taken into consideration, it would not change the average loading very much (Rec., 248).

Turning to page 11 of Exhibit 1, the comparison made with rates from Montgomery, Alabama, to points in South Georgia, is a comparison that would exist to pretty well all points in Georgia where there are through rates pubished from Montgomery, with the exception of Atlanta and certain Atlanta and West Point Railroad stations, which are on the basis of the Georgia Commission's scale (Rec., 248).

The Montgomery rate to Atlanta is on the basis of the Georgia scale. That same situation exists with respect to washed gravel and is also true as to sand. I want to say that I do not consider that the Georgia scale is equitably graded (Rec., 249).

Mr. Brooker moved that the last part of the answer be stricken as not responsive. The objection was noted (Rec., 249).

I am connected with the Alabama Commission, but I am acting in the capacity of advocate for the complainants and interveners in this case. The Alabama Commission has intervened; I guess I am representing them (Rec., 249).

[fol. 67] The Birmingham slag interests are in the case too. I do not know whether our Commission employed Mr. Cotterill to represent them in this case; they had not when I left (Rec., 250).

I constructed this proposed scale which I propose shall apply to the territory within the scope of the investigation. The scale goes up to 1,020 miles in order to take care of the situation in the peninsula of Florida. It is for this Commission to say whether the scale proposed by me shall set aside the Georgia scale and apply intrastate in Florida (Rec., 250).

We endeavored to present to this Commission a well-rounded fully developed scale of rates and we had to comprehend the whole southern territory in order to do it (Rec., 251).

We endeavored to consider producers and consumers and the carriers all over the southern territory (Rec., 251).

There is a very large movement of sand and gravel from the Montgomery district to Atlanta. It may be true that it is the largest single movement. I know there is a large movement of sand and gravel from the Montgomery district to Atlanta and a large movement of slag from the Birmingham district, but just what proportions of the total movement they are, I do not know (Rec., 251).

The single line distance from Birmingham to Atlanta is 167 miles and from Montgomery to Atlanta it is 174 or 175 miles (Rec., 252).

I do not know what points in Georgia this washed gravel and slag competes with at Atlanta (Rec., 252).

I can give you my general information, that your rock quarries and sand pits are located principally within a very close range of Atlanta (Rec., 252).

From Montgomery the Atlantic Coast Line, Seaboard [fol. 68] Air Line and Central of Georgia Railway extend right across through the heart of the State of Georgia on single line movements. From Birmingham, the Central of Georgia, the Southern Railway, and the Atlanta, Birmingham & Atlantic extend across the State of Georgia, with single line movements (Rec., 252).

These carriers serve the Atlanta district, as well as the South Georgia district, which I have referred to, on a single line basis (Rec., 252).

I do not know of any rock quarries in Georgia that compete with this gravel and slag which can reach this South Georgia territory on a single line scale within 160 miles. But we extended the joint line differential a little further than in the Georgia scale (Rec., 253).

I do not know where is Ladds, Georgia. If it is on the Seaboard Air Line Railway three or four miles from Cartersville, it would have to move over two or more lines going south in Georgia. I will accept your statement that it is approximately 51 miles joint line from Ladds to Atlanta, through Cartersville and approximately 68 miles via the continuous line through Rockmart on the Seaboard (Rec., 254).

Mr. Price: I just want to know what consideration was given to the Georgia scale, as compared with the Alabama situation (Rec., 254).

Mr. Aldredge: I don't see, and my Commission doesn't believe, and these complainants and intervenors don't believe, that any mileage scale of rates constructed for general application in southern territory should be warped or twisted in any way to take care of any present situation (Rec., 254) in Georgia or any other state, even in Alabama. It is wholly wrong to construct a mileage scale in that manner. When you twist it to take care of a certain situation, you are creating more situations. If you have special situations, they ought to be taken care of by special treatment. We tried to construct the scale on a reasonable and consistent gradation, and we have shown how the gradation is brought about (Rec., 255).

[fol. 69] Personally, I have never been in favor of one scale of rates for single and joint line application. I don't even favor it in class rates. But it can work much better in class rates than it can in these lower grade commodity rates. I think some recognition should be given to the greater cost of joint line service on an average than single line service, for some reasonable distance, depending largely upon commercial considerations and transportation considerations (Rec., 255).

By Mr. Price:

Q. Now, considering the movement of crushed rock, Mr. Aldredge, there is a quarry at Sparta, on the Georgia Railroad about 55 miles east of Macon, and there are quarries on the Georgia Railroad between Atlanta and Augusta, around the Stone Mountain district, and there are quarries on the Seaboard Air Line between Atlanta and Elberton, the South Carolina State Line; now, to reach this South Georgia territory, do you know of any lines or any way that this material can reach there except under joint line movement? (Rec., 256).

A. No, sir, I do not, but I think that is a natural disability, and I don't know those who have a natural advantage should yield to the demands of those who have the natural disadvantages, that is just something that is unavoidable and nobody can help (Rec., 256).

Q. Then, wouldn't it follow that this extended joint line differential would add to that natural disability in favor of the Birmingham and Montgomery districts? (Rec., 256.)

A. I don't think so. We have constructed this scale just as fairly as we know how to construct one. Now, if you will let me show you something here, I think I can illustrate my answer (Rec., 256).

I have reference to the graph. Your quarries and sand pits are located, according to my understanding, certainly a large part of them, within 60 miles of Atlanta.

[fol. 70] This Georgia scale begins at a very low level and holds that until it gets at about 75 miles, and then takes a perceptible bend upward, a perceptible hump until it goes back within a reasonable gradation at about 375 to 400 miles. Within that hump, it touches the movement of slag and sand and gravel from Alabama producing points into Atlanta and the Georgia markets. The scale that we worked out was constructed to eliminate all the humps (Rec., 257).

The Georgia Commission's scale begins at a low level, 50 cents a ton. Ours begins at 45 and at 35 cents on sand, but it steps up (Rec., 258).

I am not familiar with the sand pits in the Lumber City district in Georgia. I am familiar with the sand pits on the [illegible], B. & A. Railway, which are more than 100 miles from Atlanta, but they use Birmingham as their principal market (Rec., 258).

By Mr. Price:

Q. The gentleman from Junction City said he used Atlanta. Now, Mr. Aldredge, in the beginning of the proceeding, there was some mention made of some kind of a conference in Washington last week between Mr. Caskie and Mr. Cotterill and Commissioner Lewis; were you or Commissioner Patterson present at that conference? (Rec., 258.)

A. I was not, I don't know whether——

Q. Do you know whether Commissioner Patterson was or not?

A. No sir, I don't know.

Q. Do you know whether this case was discussed at that conference or not?

A. No sir, I don't know anything about it.

Q. Do you know who invited the conference?

A. No sir, I don't know a thing about it (Rec., 259).

The proposed scale which I have presented is thought to be a reasonable scale for application throughout southern territory. In the construction of it, we gave consideration to the rates on these commodities in the Carolinas and [fol. 71] over in the Mississippi Valley, too. The 1917 and 1918 scale, as my exhibits plainly show, was proposed for uniform application in Alabama, Georgia, North and South Carolina, by the Southern Railway and those other railroads parties to it. They propose the same level (Rec., 259).

We have prescribed a great many scales in Alabama on different commodities. I do not think we have prescribed a minimum scale. I do not recall any Alabama shipper requesting the Alabama Commission to prescribe a minimum scale, but they have asked us to remove discrimination many times by prescribing absolute rates, and we have prescribed absolute rates (Rec., 260).

Commissioner Lewis: It is just possible in the light of the questions asked by Mr. Price, that misunderstandings may arise as to this conference called by Commissioner Lewis to which he has made reference, and I desire for the record to show that I did call into my office Mr. Thurtell, who had brought the Thirteenth Section case, Mr. Caskie and Mr. Cotterill, who happened to be in the city, and who were the representatives in the next complaint cases, and

took up with them the question of whether we could not shorten, or whether we could shorten the procedure here, and Mr. Gwathmey, when we found Mr. Thurtell would not be here, was called in, and I again presented the questions to him. There was at no time any discussion of the merits of these matters that were to be laid before us. I had a letter from Mr. Price, and I wrote to Mr. Price, asking him if I could see him here on Sunday, and I intended to take up with Mr. Price exactly the same proposition. Mr. Patterson was never brought into this conference, and so far as the State Commissions or any parties are concerned, they were never in mind, it was simply a matter of seeing whether we could not shorten the procedure here, with the result that Mr. Waters and I formulated the questions which were laid before you when we met here on Monday morning (Rec., 261).

[fol. 72] Mr. Burchmore: I called at the Commission last week to inquire about the procedure and was informed of the conference in question. I am quite sure it was the wish of the Commission that all parties to this controversy would be consulted about the procedure (Rec., 262).

Mr. Brooker: I had a two or three hours' conference with you on Sunday evening about this proposed plan (Rec., 262).

Mr. Price: I want to thank you, Mr. Commissioner, for the statement that has been made in the record. We were just a little concerned because Georgia's interest here we think is the most vital of any in this whole proceeding, and some mention was made of these conferences in the beginning, and naturally our Commission wondered why, with all others concerned except Georgia, who was most vitally concerned, we had not been invited to those conferences (Rec., 263).

Witness excused.

[fol. 73] A. J. Rhea was recalled for cross-examination, and testified further as follows:

Exhibit 3 is in error in showing August 1, 1925, as the effective date of the rates. The mileage scale went into effect on April 1, 1925, and my best recollection is that it applied only where it involved reductions and the rates which were on a lower basis were not increased to the mile-

age scale until the interstate revision was made on August 1st (Rec., 264).

On Exhibit 5, the three columns headed 19, 20 and 21, all show municipal rates on these materials in Florida. The rates shown thereon under the caption "crushed stone" are the intrastate rates in Florida on commercial shipments as distinguished from stone shipped for municipal or state purposes. The only commodity covered by Exhibit 7 is slag, and the shipments on this exhibit are shipments from Ensley, and Alabama City, to all destinations in southern territory, not merely those involved in this case (Rec., 266).

The same thing is not true of Exhibit 27. That exhibit does not include one or two cars to Shreveport, Louisiana, and all traffic south of the line of the Seaboard Air Line from Jacksonville to River Junction. It embraces all shipments to all points in the southeast of the Mississippi River other than the Florida peninsula (Rec., 266).

If, as the result of this case, there is a uniformity of rates as between slag and sand and gravel, thereby eliminating such advances as slag may have by reason of any present differences in rates, I do not think it would serve to decrease the movement of slag, because there are numerous points to which we haven't rates on slag at this time. We have been trying to get them over the Louisville & Nashville (Rec., 267).

[fol. 74] I don't admit that our rates on slag generally are lower than on the other commodities. The extent to which the rates are lower would have an influence on the movement to particular destinations where we haven't rates that will move slag and our competitors have (Rec., 268).

Mr. Mohr moved with respect to Exhibit 26, that all of the data contained therein, showing the amount of increases that would result if the scale were applied to intrastate shipments in Alabama, be stricken from the record on the ground that the Alabama intrastate rates are not in issue.

After discussion of counsel, the Examiner ruled that the exhibit be admitted for what it is worth, subject to the objection (Rec., 270).

Mr. Mohr also moved that Exhibit 27 be stricken from the record for the same reason. It involves a great many shipments between points that will not be affected by an

decision in this proceeding. The objection was noted (Rec., 271).

Mr. Ribe: I want to elaborate on a previous answer in one respect: We are supporting the complainants in this case with the idea that it will ultimately result in one uniform system of rates over the south. Should the Commission find the rates from Montgomery to points in Florida unreasonable, we have no standing in court, and if the carriers do not follow with a proposal of a uniform revision from the south into Florida, we expect to file a formal complaint attacking our rates to Florida under section 1 (Rec., 271).

The majority of the points on my exhibit 9, under "gravel" are gravel shipping points. There seem to be 19 points named. Mr. Ireland referred yesterday to 6 points outside of Mississippi. I think he was counting the Montgomery district as one point (Rec., 271).

Gravel, either washed or unwashed, is shipped from the majority of the points shown. I cannot say from which points washed gravel moves (Rec., 272).

I have not filed any complaint here attacking the rate on slag (Rec., 272).

[fol. 75] Referring to Exhibit 27, my company, on shipments from Birmingham, paid a total revenue of approximately $280,000 for the period in question. If the rates which I have proposed here were adopted they will reduce that revenue to the extent of $23,633.47 for seven months (Rec., 272).

Exhibits 26 and 27 cover the same tonnage, shipped from Alabama City and Ensley, and No. 27 is a recapitulation of No. 26 (Rec., 272).

My company is located at Arrowhead, named on Exhibit 9, and ships practically no washed gravel to Birmingham. Washed gravel is shipped from Montgomery to Birmingham; I do not know to what extent, except that I recall a shipment two or three years ago to a high school job (Rec., 273).

There is a large movement of coal from Birmingham and slag moves from Birmingham in the same direction (Rec., 273).

On Exhibit 10, the rate from Gaillard, Georgia, to Atlanta is shown as 57 cents prior to August 1, 1925, and the proposed rate is shown as 80 cents. That rate was in-

creased effective August 1, 1925, to 90 cents (Rec., 274).

Exhibit 26 was prepared on the basis of the short-line distance, disregarding actual routes of shipment. It was not intended to show the route of the movement (Rec., 275).

The intrastate rates in Mississippi shown on Exhibit 4 are single line rates. I have not shown the joint line rates in Mississippi and do not know what the basis of joint line rates is (Rec., 275).

The direct routes from Montgomery into Mississippi, with the exception of the Louisville & Nashville, would be joint line hauls (Rec., 275).

Mr. Aldredge had a number of scales in his exhibits. The scale we are supporting is shown in my Exhibit No. 7 and is intended to be the same as Mr. Aldredge's proposed scale (Rec., 275).

[fol. 76] I also subscribe to Mr. Aldredge's proposed classification of these materials. Our own view is that there are no differences in the transportation characteristics that would warrant different rates (Rec., 276).

We subscribe to the different descriptions in the complainants' proposal, but base them on other than transportation conditions (Rec., 276).

Mr. Cotterill: Unless it be thought that the other enumerated reasons can be considered as transportation reasons (Rec., 276).

There are no other reasons, so far as we are concerned, for subscribing to the classification set forth by Mr. Aldredge, except an effort on the part of the Alabama interests to get together and iron out our differences, and after fighting among ourselves for years, we agree to what has been proposed (Rec., 277).

I included on Exhibit 9 all of the stone shipping points of which I have personal knowledge of a movement into Birmingham district. I did not know that there was a movement from Margerum and Colrock, Alabama (Rec., 277).

None of my exhibits are intended to cover all of the rates on all of the commodities from and to all of the points (Rec., 277).

I have no knowledge of a production of asphaltic limestone at Colrock or Margerum, Alabama, and do not know anything about the movement (Rec., 278).

In deciding that there should be a difference between the rates applied to these various materials, the principal element we gave consideration to was that there is no competition between sand and the other commodities. We were willing to relinquish our position that sand should go on the same basis as clay gravel for short distances and we would concede that that commodity should be included with sand, although in making the concession, it was contrary to our own view. We agreed as a concession in the efforts to get together with Alabama interests (Rec., 278).

Not all of the Alabama stone interests were parties to [fol. 77] this getting together. The interests represented by Mr. Martin in northern Alabama did not concur in these proposals (Rec., 279).

Referring to the stations on Exhibit 8, beginning with Spruce Pine, Alabama, on page 1, and including the Southern Railway points ending with Haleyville on page 2, based on my general knowledge of the Birmingham district, the preponderance of the movement is from the first group of points which is why I showed the sand in two groups. If there is any movement at all from these Southern Railway points, it is insignificant (Rec., 279).

Under the complainants' proposal of a strict mileage scale, I think there would be a change in the flow of the traffic in some cases, that the carriers would earn different revenues to the extent that the shipments would move from nearby points instead of far removed points would be more true as to commodities other than slag (Rec., 280).

The rates shown on Exhibit No. 3 as rates prior to August 1, 1925, were the rates that were in effect prior to April 1, 1925, when they applied both intrastate and interstate, but I believe they were the outgrowth of rates made by the Georgia Commission (Rec., 280).

The carriers in their tariffs eliminated class P and put in a line of commodity rates due to the specific advance and this is the modern equivalent of Class P. I found this as a commodity rate in our Georgia local tariff (Rec., 280).

Q. Now, with what points in Georgia do you meet competition on your slag business, and where is the discrimination due to the Georgia rates?

Mr. Cotterill: I don't believe there was any complaint as to discrimination against slag from Birmingham in favor of any rates in Georgia.

Mr. Price: His exhibit refers to Docket No. 17517, which I understand is a Thirteenth Section Case (Rec., 281).

Mr. Cotterill: I had overlooked that there was a separate intervention on the Thirteenth Section A Case brought by the carriers, that is all right (Rec., 281).

[fol. 78] Mr. Ribe: Our rates with the exception of the large points in Georgia are based on the scale that the carriers now have as their proposed scale before your Commission and the Alabama Commission, and as you know that scale is materially higher for numerous distances than the scale that you prescribed for application on the commodities with which slag competes (Rec., 281).

I do not know whether this covers the preponderance of our movement into Georgia. Atlanta is the heaviest individual consuming point, but I think the State of Georgia as a whole will take a good deal more than Atlanta individually (Rec., 282).

We are concurring in the scale of proposed rates shown on Exhibit 3, in the hope that it will be adopted for general application throughout southern territory including intrastate in the State of Georgia (Rec., 282).

Our principal objection to the present Georgia scale is that the gradation jumps, particularly I notice in one spot that it seems to jump from about 80 miles to 110 or 115 miles without a change in rate. That has the effect of including important Georgia sand shipping points in a group that otherwise would not occur if the scale had the proper gradation. I refer to points in the Fort Valley district which I believe range from eighty-some odd miles, Gaillard for instance, is 94 miles, Lumber City is 104 miles. I can best explain that by looking at Mr. Aldredge's map (Rec., 283).

That is the only objection I have found to the Georgia scale, outside of the level of it. We think the gradation part and the increase in our proposed scale is better than the one the Georgia Commission fixed (Rec., 283).

Using Junction City, which was referred to this morning, it is a fact that there is a considerable movement of sand in Georgia for a good deal longer distance than 105 miles. I think our scale would reduce the revenue that Lumber City has to pay over the shorter distant points [fol. 79] under the Georgia scale. Our scale would reduce the differential that Lumber City has to pay over the Fort

Valley district, in comparison with the Georgia Commission's scale. It will also reduce the differential between the Montgomery district and the Fort Valley district to Atlanta. But I said it would reduce the differential as between Lumber City and Atlanta and points located from 90 to 110 miles of Atlanta. Lumber City is approximately the Montgomery distance from Atlanta (Rec., 284).

I can't say whether I would have found any objection to the Georgia scale if the rate had been made 5.5 cents for 110 miles by the Georgia Commission. That was the principal objection I found to the Georgia scale, but I said that we preferred our own scale because we thought the gradation was better (Rec., 284).

I supported the Georgia scale in the proceedings before the Alabama Commission (Rec., 284).

By Mr. Burchmore:

Q. Do you believe that the total intrastate movement of sand and gravel in any representative week would be as low as one or two cars in the State of South Carolina, or one or two cars in the State of Virginia, or ten or fifteen cars in the State of Tennessee, as little as that?

A. Mr. Burchmore, I think you overlooked the fact that these exhibits do not include the hauls under 80 miles or more than 200 (Rec., 285).

Q. Well, I am not overlooking anything; I am asking you that question.

A. Well, these exhibits only include the shipments moving within distances of 80 to 200 miles, and I think that Exhibit No. 18 could be agreed as based on the carriers' figures (Rec., 285).

Q. Wait a minute, I didn't ask you about that. Just look at Exhibit No. 19, and read the words, it says: "Such analysis being made for the purpose of showing the extent of the intrastate movement exclusive of the intrastate movements to Atlanta, Birmingham, Memphis and New Orleans;" then it enumerates the states, so I am asking [fol. 80] you, since you directed my attention to that exhibit, do you believe that in any representative period there is that small a number of tons moving distances less than 200 miles in these states? (Rec., 285.)

A. No sir (Rec., 285).

In answering this question, I took account of the movements under 80 miles as well, from nothing to 200 miles. If that range of distance be regarded, the movement of 15 cars would not be typical (Rec., 286).

The carriers' exhibit, from which Exhibit 19 was taken, did not segregate sand from gravel (Rec., 286).

There is no limitation as to mileage on Exhibit No. 19, but the information contained in No. 19 is the same as shown in No. 16 and covers the same carrier exhibit. I was mistaken in thinking that was on the exhibit itself (Rec., 286).

I think that it is possible there were only 1 or 2 cars moved intrastate for distances between 80, as a minimum, and 200 miles, as a maximum in the states of South Carolina and Virginia, or only 15 cars for such distances in the State of Tennessee in a representative week. In some states, I imagine the movements are relatively short. I do not know what the condition would be in Tennessee. That exhibit was presented by the carriers as covering a representative week and I took it for what it was worth and used it (Rec., 287).

Exhibit 19 should be taken as covering data for movements over 80 and under 200 miles, although the exhibit on its face does not say so (Rec., 288).

Q. Mr. Ribe, you have pointed out what to you seems to be a serious if not fatal criticism to the progression of the Georgia Commission's scale in a certain respect; do you wish it to be understood that that particular defense as you view it is one which is susceptible of correction without having a consequence in other mileage blocks, or would the effort to straighten out a kink of that character necessitate a change in the balance of the scale? (Rec., 288.)

[fol. 81] A. I think the change in the balance of the scale would follow necessarily (Rec., 288).

Q. Mr. Ribe, do you care to comment upon the so-called recent conference in Birmingham, in which you have become involved by certain other questions, at least so far as to explain the circumstances under which Mr. Martin came to be there and why it was that he was out of step with the rest of the parade? (Rec., 288.)

A. I don't know why Mr. Martin happened to be there; my own opinion as to why he was out of step with the

balance of the parade, as far as I am personally concerned, is that we haven't yet reached the conclusion that we should concur in the same rates on asphalt rock that he has been advocating (Rec., 289).

Mr. Cotterill: Notice was promulgated by the Alabama Commission after it had concluded that it was its duty under its own statute to participate in this proceeding, and in order that it might be informed as to facts and circumstances that would enable it to conclude as to the proper course which it should pursue, two members of the Commission and its special Examiner, Mr. Aldredge, went to Birmingham for the purpose of meeting the interests in Alabama which were understood to be in intefest in the case. Among the notices sent out was one to a certain Chamber of Commerce in Alabama (Rec., 289).

At any rate, the argument was simply for private consultation between the Alabama Commission and those in interest in those proceedings, so far as the Alabama Commission understood them. Mr. Martin participated through some connection which it turned out that he had with the Florence Chamber of Commerce, and participated in it in behalf of or as a part of the group intended to be assembled at the conference, but as an avowed representative of stone producers, or another commodity which so far as the complainants believe and understand are not even involved in [fol. 82] the case. Finding Mr. Martin there, it was only natural that courtesy should suggest that he be permitted to remain. Nothing occurred in the conference other than that which will usually occur when parties either having common interests or similar interests discuss the matters coming before them; that was its only significance. Mr. Martin was frank enough to disclose after he got in the conference that he would also represent the Mississippi interests which were clearly in direct opposition to those of the parties who were invited to the conference (Rec., 290).

Mr. Martin: I offered to withdraw in order that they might discuss other matters more freely in my absence, but they invited me to stay (Rec., 291).

I appeared before the Georgia Commission on November 26, 1923, at the time the scale was submitted by the Commission to the shippers and carriers for criticism and I

approved the Georgia scale. I approved it as late as a hearing referred to by Mr. Brooker before the Alabama Commission. Since then we have changed our minds about it. We had not discovered the kink up to that time (Rec., 291).

On Exhibit 3, the present rates in Georgia are shown in the last two columns (Rec., 292).

It was the general claim that there was no movement under the Class P scale in effect prior to August 1, 1925, which is shown on Exhibit 3, but I do not know that of my own knowledge (Rec., 292).

[fol. 83] J. L. GRIFFITH, recalled for cross-examination, testified further as follows:

The furthest distance we ship sand, from Chattanooga, in considerable volume, is approximately 75 miles. Gravel goes a little further than that, something like 140 or 150 miles. The greater volume of the gravel does not move beyond 150 miles. I would not name specific points. I recall a considerable movement to Rock Island, Tennessee, and Atlanta, Georgia (Rec., 294).

If the proposed scale that we are advocating is adopted, we would expect to ship to any point that the market would offer where the rate would be sufficient to permit us to participate in the business. I have no particular points in mind. It is just as likely to be one point as another. In highway construction you never can tell (Rec., 294).

The rates shown in the first column on Exhibit 28 apply between all points on the Atlanta division of the N., C. & St. L. Railway between Chattanooga and Atlanta, in Georgia, with the exception of Dalton and Atlanta. The rates shown in columns 7, 8, 9, and 10, on the exhibit, apply from any production point in Georgia to points within the State of Georgia, over what we term Class A roads. It is our position that any producing point on any lines over which these scales apply are competing points with Chattanooga (Rec., 295).

Exhibit 33 in the main may be considered as just a comparative rate statement (Rec., 295).

Scales 13 and 14 on Exhibit No. 28 apply over the Knoxville division of the Southern Railway between Chattanooga and Knoxville. We ship sand and gravel up that line in any considerable volume for approximately 75 miles, which would reach in the vicinity of Loudon (Rec., 296).

Exhibit No. 32 covers the C. N. O. & T. P. Railway. We ship on that road as far as the Kentucky state line. We have shipped up past Oakdale. There is a sand and gravel plant at Oakdale (Rec., 296).

I do not recall having shipped any sand to Atlanta, either [fol. 84] before or since the revision of August 1, 1925.

By Mr. Brooker:

Q. In other words, does your company intend or expect to have Atlanta as a sand market in the future? (Rec., 297.)

A. I don't think it is entirely beyond the realms of possibility of having it for a sand market (Rec., 297).

Q. Isn't it true that under the rates that went into effect August 1, 1925, your rate situation from Chattanooga as compared with Gaillard, Georgia, to Atlanta, is a great deal better than it was prior to that time? (Rec., 297.)

A. I couldn't answer that without making a comparison in the rates prior to that time, I don't recall what they were (Rec., 297).

Q. Well, if I should tell you that the differential that you paid over Gaillard to Atlanta prior to August 1st was 45 cents, and at the present time it is 20 cents per ton, and that as compared to Montgomery, instead of having 25 cents a ton higher than Montgomery from Chattanooga to Atlanta, you are now 10 cents below Montgomery to Atlanta, don't you think the Georgia scale has helped you out to that extent? (Rec., 297.)

A. It doesn't help out unless it is sufficiently low to move the business (Rec., 297).

Taking your statement as true, as a matter of comparison, our position would be more favorable in Atlanta, but still the rate is too high to move the business.

(Witness excused.)

[fol. 85] R. J. Doss testified as follows:

I am assistant general freight agent of the Atlantic Coast Line, headquarters Wilmington, North Carolina (Rec., 306).

I have been connected with the Southern railroads in some capacity or another for approximately twenty-six years. My testimony will deal with the rates on chert, clay, sand, gravel, crushed stone, slag, etc., within the state of Georgia, covered by I. C. C. Docket No. 17517 (Rec., 307).

I will undertake to show that the intrastate mileage scales established between points in Georgia by the Georgia Public Service Commission, in its order of February 25, 1925, which rates became the maximum rates in Georgia, effective April 1, 1925, are unreasonably low; that they discriminate against interstate shippers of these commodities to, from and through Georgia; that their establishment has already caused financial loss to the Atlantic Coast Line Railroad, and that, if continued in effect, they will no doubt spread to interstate shipments and thereby cause additional and serious loss to this railroad (Rec., 307).

I will also undertake to justify uniform application of the joint and single line scales, reduced [illegible] per cent as of July 1, 1922, which the Georgia trunk line carriers, in 1921, submitted to the Georgia and Alabama Commissions. These scales are already very generally applied throughout the south, particularly by the Atlantic Coast Line Railroad on interstate traffic. It should be understood, however, that the application of these scales has not been, and is not now being, proposed to, from or between points in Florida south of the line of the Seaboard Air Line Railway from Jacksonville to River Junction, Florida; the carriers' proposed mileage scales are to be applied only between points in the south on and north of the Seaboard Air Line Railway from Jacksonville to River Junction. Unless specified to the contrary, my testimony should not be considered as dealing [fol. 86] with the rates to, from or between points in Florida south of the line which I have just mentioned (Rec., 308).

It should be understood that by the carriers' proposed mileage scales, I have reference to the mileage scales which the carriers, in 1921, submitted to the Georgia and Alabama

Commissions, which scales were reduced 10 per cent as of July 1, 1923, in compliance with I. C. C. Docket No. 13293; unless otherwise specified, I will refer only to the scales submitted for application locally or jointly between points on so-called trunk lines. By the Georgia Public Service Commission's mileage scales or order, I have reference to the order of the Georgia Public Service Commission, dated February 25, 1925, its Dockets Nos. 15416 and 15997 (Rec., 308).

The total movement of stone, sand, and like articles, via Atlantic Coast Line Railroad was, during 1922, 1,825,702 tons, which was 11.1 per cent of its total tonnage handled for that year; in 1923 it handled 3,047,292 tons, which was 15.2 per cent of the total tonnage handled; in 1924 it handled 3,750,195 tons, which was 18.1 per cent of the total tonnage handled. The figures for the year 1925 are not yet available, but for the first ten months ended October 31, 1925, the Atlantic Coast Line Railroad handled 4,452,519 tons, which was 22 per cent of the total tonnage handled during those ten months; the total revenue accruing on this 1925 tonnage was $4,074,316.02, or an average rate of 91.5 cents per ton. During the ten months period mentioned, the Atlantic Coast Line Railroad handled more tonnage of stone, sand, and the like, than of any other one commodity. The tonnage of stone, sand, and the like, exceeded by more than 1,300,000 tons the tonnage of the next ranking commodity; the revenue on stone, sand and the like, ranked fifth in the list (Rec., 309).

From the standpoint of both tonnage and revenue, this [fol. 87] traffic is of very great importance to the Atlantic Coast Line Railroad (Rec., 309).

Only one other railroad, the Southern Railway System, handles more of this traffic than the Atlantic Coast Line (Rec., 310).

In this movement of stone, sand, and the like, between points on the Atlantic Coast Line Railroad, there is practically no utilization of empty equipment moving in the direction of this tonnage. In handling sand and gravel from the Richmond and Petersburg districts to points west of Richmond, Petersburg and Jarratt, on the Chesapeake & Ohio Railway, Norfolk & Western Railway, and the Virginian Railway, empty coal equipment returning to the

mines can be utilized; because of this advantageous operating condition, the rates applicable on sand and gravel to these points have been made lower than they would have otherwise. On sand and gravel moving from North Carolina and South Carolina origins, eastward or northward, there is at times opportunity to utilize empty coal equipment returning to the Virginia, West Virginia and Eastern Kentucky mines. But the large and important movement of stone from Columbia, South Carolina, sand and gravel from North Carolina, South Carolina, Georgia and Alabama producing points, and of slag from the Birmingham district and Copperhill, Tennessee, to the territory served by the Atlantic Coast Line Railroad in South Carolina, Georgia, Alabama, and Florida, is in the direction of the loaded movement of gondola, coal and other open top equipment. There is practically no opportunity to utilize this equipment when moving in the direction opposite to the loaded movement. As a matter of fact, we are not able to furnish return loading for but little of the equipment which reaches us loaded with coal and such commodities, and which is made empty on our line or on the lines of our short line connections. Our Superintendent of Car Service has advised me that the empty movement of gondolas on the lines of the Atlantic Coast Line Railroad is substantially the same as the loaded movement. Gondolas are used almost [fol. 38] exclusively in the movement of sand, gravel, stone, slag, etc. The records indicate that for practically every mile we haul a loaded gondola car, we have to perform a corresponding haul on an empty gondola (Rec., 310-311).

A series of exhibits for the purposes of this case were prepared by me or under my direction (Rec., 311).

My Exhibit 34 is a statement showing the rates on sand, gravel, crushed stone, slag, etc., submitted by the Georgia trunk and short line carriers to the Georgia Commission in 1921, for single and joint line hauls, compared with the rates on these commodities prescribed by the Georgia Public Service Commission in its order of February 25, 1925 (Rec., 312).

Exhibit 34 was received in evidence (Rec., 312).

My Exhibit 35 compares the mileage scales in effect on these commodities between points on the Atlantic Coast

Line Railroad in Georgia prior to April 1, 1925; the single line scale proposed by the Georgia trunk line carriers; and the rates prescribed, effective April 1, 1925, by the Georgia Public Service Commission (Rec., 313).

Exhibit 35 was received in evidence (Rec., 313).

The mileage scales shown as in effect on the Atlantic Coast Line Railroad prior to April 1, 1925, are the same as those then in effect locally between points on other lines in Georgia. The exhibit does not show distances beyond 300 miles, for the reason that there are no hauls on the Atlantic Coast Line Railroad in excess of this distance (Rec., 313).

Prior to April 1, 1925, there were no joint line mileage scales applicable on these commodities between points in Georgia; in the absence of specific through rates, lowest combination applied observing 90 per cent of the maximum local rates in effect on June 25, 1918, plus 20 cents per ton, plus the 25 per cent increase under Ex Parte No. 74, less 10 per cent as of July 1, 1922, under I. C. C. Docket No. 13293 (Rec., 313).

[fol. 89] My Exhibit No. 36 is a chronological statement of rates on sand and gravel, carloads, between points in Georgia on the Atlantic Coast Line Railroad, and its predecessors, from 1885 down to date (Rec., 313).

Exhibit 36 was received in evidence (Rec., 314).

My Exhibit 37 is a similar statement showing the rates on crushed stone, applicable between points in Georgia on Atlantic Coast Line Railroad, and its predecessors, in effect in 1885, and, in chronological order, the subsequent changes therein (Rec., 314).

Exhibit 37 was received in evidence (Rec., 314).

Prior to April 1, 1925, the rates were published in dollars and cents per car, but for the purpose of these exhibits, they have been converted to per ton basis (Rec., 314).

It will be observed that from 1885 to 1890 there was a steady decline in the rates. The rates established effective December 1, 1890, as result of Circular No. 178 of the Railroad Commission of Georgia, remained in effect without change until, effective April 1, 1915, when they were slightly

increased by the authority of the Railroad Commission of Georgia's Circular No. 391. I have reproduced the Georgia Commission's report and order which preceded the issuance of its Circular No. 391, and I desire to file same as my Exhibit No. 38 (Rec., 314).

Exhibit 38 was received in evidence (Rec., 314).

On Exhibit 34, where I show the caption submitted by carriers to the Railroad Commission of Georgia, this column shows the rates that the carriers are now proposing, being the scale which they submitted to the Georgia Commission in 1921, less 10 per cent. I am dealing now with a history of the intrastate rates in Georgia (Rec., 315).

In undertaking to revise the rates to, from and between points in the south, in compliance with the Interstate Commerce Commission's Fourth Section Order No. 3866, of April 13, 1914, the carriers found it necessary to petition [fol. 90] the state commissions for a general revision in the intrastate rates in the several southern states except Florida. Petition of the Georgia carriers, addressed to the Georgia Commission, was filed in the early part of 1916 (Rec., 315).

In the carriers' original petition they suggested that the then existing rates on sand, gravel and crushed stone be continued. The then current rates were those which had only shortly theretofore been established under the Georgia Commission's Circular No. 391, effective April 1, 1915, and to which I have just referred (Rec., 315).

At the hearing of the carriers' petition during the latter part of 1916, the original petition was amended and a revised mileage scale for application on sand and gravel was suggested. This revised scale was lower than the mileage rates than in effect. Later, substantially the same mileage scales were submitted to the Alabama Commission (Rec., 316).

My Exhibit No. 39, shows under Column "A" the rates submitted to the Georgia and Alabama Commissions in 1916; also the rates tentatively approved by the Georgia Commission in 1917 (Rec., 316).

Exhibit 39 was received in evidence (Rec., 316).

These figures have been subjected to the general rate changes which have since occurred, and, in Column "B" of

the exhibit, are shown as they would be today. The exhibit also shows in Column "C" the rates approved for the Alabama Great Southern Railroad in the Meridian Case, I. C. C. Docket No. 9560; it shows in the Column "B" the rates, less 10 per cent, proposed by the carriers in 1921; and in Column "E" the rates recently prescribed by the Georgia Public Service Commission. (Rec., 316).

It will be observed that the so-called Meridian scale is substantially the rate suggested by the carriers in 1916. On sand, the rates are lower than those which the carriers are now suggesting, while on crushed stone and slag the [fol. 91] rates formerly suggested by the carriers are higher than those now suggested (Rec., 316).

Had the Georgia carriers, in 1916, followed their original plan of not suggesting any change in the rates on sand and gravel, which, as I have previously explained, were established by the Georgia Commission, effective April 1, 1915, and had the Georgia Commission decided to continue its scale of maximum rates, the mileage scale in effect on sand and gravel between points in Georgia today would, but for the Commission's order of February 25, 1925, be substantially the same as the single line scale which the carriers are now suggesting (Rec., 317).

The order of February 25, 1925, is the order concerning which the carriers are complaining in their thirteenth section petition (Rec., 317).

Mr. Gwathmey: The petition in the Thirteenth Section Case was filed originally by the Atlantic Coast Line Railroad and on behalf of certain short line railroads, but by a supplemental order issued as I recall in January of this year, the Commission broadened the scope of the proceedings to include all railroads in Georgia. My understanding is that the carriers are all in accord on that point. I represent only certain carriers for whom I entered an appearance (Rec., 318).

Mr. Mohr, Mr. Walker and Mr. Pope concurred in the statement for the carriers they represent (Rec., 319).

The Witness: In submitting the proposed reductions in the mileage scales, contemplated under their 1916 proposal, the carriers were influenced by the extremely low special commodity rates then in effect between certain points in Geor-

[fol. 92] gia. There had, previous to that time, been considerable litigation regarding these low special commodity rates. The carriers at that time were anxious that a uniform mileage scale be applied throughout the state, and they decided that, instead of asking that all of the low special rates be brought up to the then existing scale, some compensating reduction should be made in the scale. Further, it was the idea of the carriers at the time that varying rates could be carried on sand and gravel, on the one hand, and crushed stone and slag, on the other hand (Rec., 320).

When the proposed reduced scale on sand and gravel was submitted to the Georgia Commission by the carriers in 1916, they did not anticipate that that scale would be observed as the maximum in revising interstate rates, or that, necessarily, it would be the basis for the maximum rates in the other southern states. The scale proposed to the Georgia Commission at the time was, however, to be observed as the minimum in revising interstate rates (Rec., 320).

The rates shown in Column D on Exhibit No. 39 are those which the carriers submitted, the trunk line carriers submitted in 1921 to the Georgia and Alabama Commissions, reduced 10 per cent, and is the mileage scale which they are now proposing to apply generally throughout the south, as I have just described (Rec., 321).

It is a reduction on slag and stone, but it represents for most of the distances an increase on sand and gravel (Rec., 321).

Page 2 of Exhibit 39, where it reads "sand and gravel", it should be "gravel other than washed gravel"; washed gravel takes the same rates as crushed stone shown on page 3 of the exhibit (Rec., 322).

I represented the Atlantic Coast Line Railroad in the conferences at which the 1921 scale was arranged and I had the authority to act for the Atlantic Coast Line Railroad. It was a committee who sat down and reviewed all [fol. 93] of the facts in connection with the 1916 and 1917 handling, and also the handling of the general question through the period of Federal control, and who were authorized to submit to the Georgia Commission in response to its request a new basis for rates on sand, gravel and other commodities (Rec., 323).

We discussed most everything you could imagine about the rates. I think each of the representatives of the carriers disclosed in the conference and in my presence the considerations which prompted them to a conclusion or course, and I am reasonably satisfied that I recall the conclusions which each carrier had concerning the reasons for them. I have also voluminous records of the various proceedings (Rec., 324).

During the period of Federal control the Southern Freight Traffic Committee of the United States Railroad Administration, located at Atlanta, gave considerable thought to the question of uniform mileage scales on sand, gravel, crushed stone, and other commodities. And for fear I may be questioned as to that, I will say that during the period of Federal control I was attached to the staff of the Southern Freight Traffic Committee, and had to do with this very review of mileage scales. We made a careful check of the then existing mileage scales. As result of this study a conclusion was reached that the carriers' previously suggested mileage scales on sand and gravel were too low. Consequently, when, after the termination of the period of Federal control, the carriers, in response to an order of the Georgia Commission, came to consider the mileage scales to be then submitted, they decided that they should suggest the same mileage scale on sand, gravel, crushed stone, slag, and other low grade building materials (Rec., 325).

In arriving at their proposed scales, the carriers were influenced, among other things, by the following considerations:

[fol. 94] 1. That the study made during Federal control, by the Southern Freight Traffic Committee, indicated that the previously proposed scales, particularly on sand and gravel, were too low (Rec., 325).

2. That there was no justifying reasons for suggesting any reductions in the scales previously proposed on crushed stone and slag, although this would be necessary in order to carry the same rates on crushed stone and slag as on sand and gravel, unless the equality be brought about by an increase in the previously proposed rates on sand and gravel (Rec., 325).

3. That whatever scales were determined upon for submittal to the Georgia Commission would also be suggested as the scales for application generally throughout the south, both interstate and intrastate, except to and from points in Florida south of the Seaboard's Jacksonville to River Junction line (Rec., 326).

4. That the scales then determined upon would bring about substantial reductions in many of the then existing interstate and intrastate rates, many of which the carriers considered to be upon a very low basis, having been established over their protest by the Federal or State Commissions (Rec., 326).

5. That, while the uniform application of the proposed mileage scales would increase the then existing specific commodity rates applicable to and from certain points, there were many other movements on which the then existing rates, either specific commodity or mileage, would be decreased (Rec., 326).

6. That the mileage scales submitted in 1916 were for local application; that is, they were to be applied only between points on the same line for single line hauls; that joint rates were to be constructed on combination using as factors 90 per cent of the local rates to and from the junction points; and that, having determined to suggest joint line mileage scales for application to hauls over two or more lines, which scales were made slight differentials higher than the single line scales, the single line scales should be suffi-
[fol. 95] ciently high to warrant their observance as the base on which to superimpose the joint line differentials. The joint line scales submitted in 1921 represented very substantial reductions in the rates yielded by the previously suggested basis for joint hauls, and, very properly, I think, consideration was given to the fact that there should be some increases in the basic single line scales to compensate for the proposed reductions in the joint line haul scales (Rec., 327).

7. That the proposed scales were to be observed as maximum scales, and should not reflect the very low commodity rates then in effect from and to certain points, which originally were established based upon special circumstances

which seemed to be controlling at the same time. Many of the subnormal rates then in effect, as, for example, on sand from Georgia and Alabama points to Montgomery and Birmingham, were originally established to meet local competition at destinations, and with the idea that they would produce revenue which would not otherwise be received, and would utilize empty coal equipment returning to the mines. In other words, it was thought proper that the proposed scales should represent a normal level of rates on these commodities (Rec., 327).

In submitting their revised scales on these commodities to the Georgia Commission in 1921, the carriers, on page 22 of their submittal, made the following statement with respect to the single line scale:

"At present there are numerous varying scales on these commodities applicable intrastate and interstate, as well as in certain instances between different parts of the same line in the southern territory. The present intrastate and interstate rates on sand, as well as those proposed by the carriers in 1916 and those approved by the Railroad Commission of Georgia in 1918, have been analyzed, and the single line rates herewith submitted very closely approximate the average of the present mileage scales on sand. [fol. 96] Rates on sand determined in this manner are submitted to apply also on chert, clay, gravel, slag, shale, etc., notwithstanding that the present rates on these commodities, as well as the rates approved in 1918 by the Commission, increased under General Order No. 28 and Ex Parte 74, are in most cases slightly higher than the rates on sand" (Rec., 328).

By order dated July 14, 1921, the Railroad Commission of Georgia (the predecessors of the Georgia Public Service Commission), required the railroads operating in that state to file with it revised class and commodity rates for the transportation of intrastate traffic within the state of Georgia (Rec., 329).

The Commission indicated that its purpose in entering this order was to correct certain existing discriminations in the rates in the state of Georgia. The rates on classes and commodities from and to certain points in that state were on a lower level, mileage considered, than were the

rates to the great majority of points in the same state (Rec., 329).

The purpose of the proposed revision which the Commission required the carriers to submit was to correct the situation just described, and to establish rates to all points in the state of Georgia made with principal regard for distances. It was also announced by the Commission that it was its desire that there be established between points in Georgia revised class and commodity rates which might preserve the then present revenues of the railroads, and might also be at such level as to permit the use of such rates as a measure for the establishment of interstate rates into and out of the state of Georgia. The revision may, therefore, be said to have three primary purposes:

1. The correction of then existing discriminations;

2. The preservation of the then existing revenues of the railroads; and

[fol. 97] 3. The establishment of a level of rates within the state of Georgia which shall be fairly comparable, mileage considered, with rates into and out of that state (Rec., 329).

In response to this order of the Railroad Commission of Georgia, the carriers, on September 24, 1921, filed with the Commission printed schedules of suggested mileage class and commodity rates. Testimony was offered in support of the suggested rates beginning on October 26, 1921, and continuing until December 30, 1921 (Rec., 330).

Revised class rates between points in Georgia were prescribed by the Georgia Public Service Commission in its order of February 28, 1923. The Commission has from time to time since that date prescribed additional revised schedules of rates to apply on various commodities (Rec., 330).

On October 24, 1923, the Georgia Public Service Commission submitted to shippers and carriers its tentatively proposed commodity rates on sand, gravel, crushed stone, chert, crude clay, slag, etc., and invited from all interested sources frank and constructive criticisms thereof, or relevant suggestions in regard thereto; the Commission advised that it would receive such criticisms and suggestions on or prior to November 26, 1923 (Rec., 330).

The Commission's tentatively suggested rates on sand, gravel, crushed stone, etc., were lower than those which had been previously suggested by the carriers, even after the latter were reduced 10 per cent to reflect the reductions made under I. C. C. Docket No. 13293. The tentatively suggested rates of the Commission were covered by its proposed Commodity Group No. 25 (Rec., 331).

I file as Exhibit No. 40 excerpts from memorandum of criticisms filed for account of the carriers at the hearing before the Georgia Commission on November 26, 1923 (Rec., 331).

[fol. 98] Mr. Burchmore objected to the exhibit on the ground that it is incompetent in that it is an excerpt from a self-serving declaration of the carriers, and that it is immaterial in what it contains; and second, if not accompanied by a tender of the entire memorandum for purposes of examination by counsel, it violates Rule 13 of the Rules of Practice (Rec., 331).

Mr. Walker: Have you intervened in the Thirteenth Section Case?

Mr. Burchmore: I make that objection (Rec., 331).

Mr. Walker: I want to know whether you are a party to that case first before you object (Rec., 331).

Mr. Burchmore: Shall I answer the question, Mr. Commissioner?

Exam. Waters: Did you intervene in this case?

Mr. Burchmore: I did not intervene in any particular cases, except that those cases were all called on one record, and we filed an intervening petition entitled in I think six cases. I don't know which if any case the witness's present testimony is confined to, I understand this is a hearing on a group of six or eight cases (Rec., 331).

Exam. Waters: That is correct (Rec., 332).

Mr. Burchmore: Now, I have intervened in four or five or six of these, I don't know just how many, but it is in my petition (Rec., 332).

Mr. Gwathmey: If the Commissioner please, I think that the exhibit is perhaps subject to criticisms on the grounds made by Mr. Burchmore. The primary purpose in offering it really was to prove the fact that the carriers did seriously protest to the Georgia Railroad Commission against this scale; if that fact may be understood as proved, I don't

insist upon filing the statement that the carriers made as to the grounds of their protest (Rec., 332).

[fol. 99] Exam. Waters: Do you admit the fact?

Mr. Burchmore: I would presume the fact, I think they always do object (Rec., 332).

Mr. Gwathmey: I do not insist on the exhibit (Rec., 332).

Exam. Waters: 40 is withdrawn (Rec., 332).

Mr. Gwathmey: It will not be necessary, I assume, to renumber all these exhibits? (Rec., 332).

Exam. Waters: No, just mark this one withdrawn.

Mr. Doss: In any event, the scale which the Georgia Commission tentatively submitted to the carriers and others for criticisms was opposed by the carriers. The final order of the Georgia Public Service Commission, dealing with the rates on sand, gravel, crushed stone, etc., was entered under date of February 25, 1925, and required that revised rates on these commodities, covered by the Commission's Commodity Group No. 22 (shown as Commodity Group No. 25 in the tentative order), be made effective April 1, 1925. A copy of the Commission's order is attached to and made a part of the petition on behalf of certain Georgia carriers, filed with this Commission on June 5, 1925, and covered by Docket No. 17517 (Rec., 333).

The rates prescribed on these commodities by the Georgia Public Service Commission were actually lower, in some cases, than those which, on October 24, 1923, it submitted for criticism on November 26, 1923. The single line scale prescribed for single line application between points on trunk lines was the same as that previously suggested; but for joint hauls between points on trunk lines, the prescribed scale was uniformly one-half cent per 100 pounds, or 10 cents per net ton, less than the rates tentatively submitted (Rec., 333).

[fol. 100] Paragraph 5 of the Georgia Commission's order authorized the Georgia carriers to substitute the new commodity mileage rates for all existing class or commodity rates, whether higher or lower, except that in no instance should the rates on commodities covered by the order be higher between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other states for the same or greater distance over the same line or lines,

the haul between the Georgia points being included in the longer interstate hauls (Rec., 334).

There were at that time instances where commodity rates on some of the commodities, covered by the order, in effect into and out of Georgia, were lower than the prescribed mileage scales, and it became necessary to make a complete check of the interstate rates into, out of and through Georgia, for the purpose of revising them so as to meet the requirements of paragraph 5 of the Georgia Commission's order (Rec., 334).

After they were furnished with copy of the Commission's order of February 25, 1925, there was not sufficient remaining time to enable the carriers to make this check of the interstate rates and then publish the revised interstate rates effective on thirty (30) days' notice. Accordingly, on March 11, 1925, the Georgia carriers petitioned the Georgia Public Service Commission, asking that the effective date of the order of February 25th, be extended from April 1 to July 1, 1925 (Rec., 334).

In response to this petition, the Georgia Commission issued its supplemental order of March 12, 1925, ordering that, until July 1, 1925, carriers be authorized and required to continue in effect commodity rates then in effect on the commodities covered by its order that were lower than the rates prescribed in the order, and authorized the charging [fol. 101] of higher rates at intermediate points, but not to exceed the maximum schedule of rates prescribed in the order. In other words, the Commission issued a supplemental order postponing until July 1, 1925, all of the increases authorized under its order of February 25, 1925, but requiring that all of the reductions contemplated by its order be made effective April 1, 1925. The Georgia carriers, under protest, made the reductions, effective April 1, 1925, by Agent J. H. Glenn's Georgia Local and Joint Mileage Tariff No. 2, I. C. C. No. A-483. My Exhibit No. 41 shows the protest which was published along with the rates; this protest now being carried in the current tariff, Agent J. H. Glenn's Georgia Local and Joint Mileage Tariff, I. C. C. No. A-529 (Rec., 335).

Exhibit 41 was received in evidence (Rec., 335).

Steps were also taken to revise the interstate rates so as to permit the establishment of the rates covered by para-

graph 5 of the Georgia Commission's order. Carriers submitted through the Southern Freight Association, under Submittal No. 20353, of April 29, 1925, the proposed changes in the interstate rates; these changes were, as a general proposition, arrived at on the following basis:

From points located outside the state of Georgia to points in the state of Georgia, rates were made not lower than the Georgia Commission's prescribed scale for the actual distance via the short line (Rec., 336).

From points within the state of Georgia to points located in other states, rates made not lower than to the Georgia border points directly intermediate to the more distant interstate points (Rec., 336).

Carriers were unable to make the revision effective July 1, 1925, and, upon handling the matter with the Georgia Public Service Commission, the Commission, on June 26, 1925, further extended from July 1st to August 1st that part of its order of February 25, 1925, which was suspended [fol. 102] under the Commission's order dated March 12, 1925. The revised interstate rates were published to become effective August 1, 1925 (Rec., 336).

It was probably these particular rates that led to the error in Mr. Ribe's exhibit to which attention was called today.

My Exhibit No. 42 is a copy of a letter written by Agent Glenn, addressed to the Interstate Commerce Commission, explaining the changes in the interstate rates made effective August 1, 1925 (Rec., 336).

Exhibit 42 was received in evidence (Rec., 336).

The Alabama Public Service Commission, the Chattanooga Manufacturers Association, the Montgomery Chamber of Commerce, and a number of individual shippers, petitioned the Commission to suspend these increases in the interstate rates. The position of the carriers with respect to these petitions for suspension was submitted to the Commission in Agent J. H. Glenn's letter of July 24, 1925 (Rec., 337).

The Commission did not suspend any of the increased rates, except certain of those published by the Louisville & Nashville Railroad, covered by Investigation & Suspension Docket No. 2470. I believe the suspended rates of the Louisville & Nashville Railroad were constructed upon basis

of the mileage scales submitted to the Georgia and Alabama Commissions, while, as I have explained, the increased rates of August 1, 1925, were, as a temporary measure, increased only to the extent necessary to permit the intrastate rates to be changed under paragraph 5 of the Georgia Commission's order. Particular attention is directed to the fact that, with the exception of the rates of the Louisville & Nashville Railroad, under suspension in I. & S. Docket No. 2470, the increases of August 1, 1925, were in the nature of a temporary measure, all of the carriers having in mind at the time that, as quickly as possible, the interstate and intrastate rates would be placed on basis of the carriers' proposed scales (Rec., 337).

[Vol. 103] The Southern carriers have, since August 1, 1925, been giving consideration to the question of revising all of their rates on these commodities, observing the mileage scales which they submitted to the Georgia and Alabama Commissions. The conclusion was reached that this revision would be undertaken immediately; as soon as the complaints now being heard are out of the way, it is the desire and purpose of the carriers to proceed with publication of the revised rates. So far as the rates to, from or via the Atlantic Coast Line Railroad are concerned, our interstate rates are now, with one or two minor exceptions, on basis of the carriers' proposed scales. Our intrastate rates, except where held down by the orders of the state commissions, are also on this basis (Rec., 338).

It is the intention of the carriers to go forward with the revision of all the rates on these commodities in the southeast, and I understand it is also the purpose of the Mississippi Valley lines (Rec., 338).

We are awaiting the result of this investigation (Rec., 339).

The carriers have in mind a revision, observing their proposed scale throughout the south. I could not undertake to say what we would do in case the Commission does not approve in this proceeding the scale which we have suggested. I do not think we would voluntarily extend what seemed to us to be an unduly low scale to or from points where we are not forced to do it. We are proposing to put into effect in the south here a uniform scale (Rec., 339).

There are proceedings pending in most all of these states, except Florida. We have, as I will explain, a proceeding pending in Alabama (Rec., 340).

All the rates that we propose to raise, to put the interstate rates on the basis of the Georgia scale, were permitted to go into effect by the Interstate Commerce Commission, with the exception of certain rates of the Louisville & Nashville Railroad on slag from Copper Hill. The rates from [fol. 104] Copper Hill are still under suspension (Rec., 340).

Mr. Burchmore: It occurs to me that it would not be quite fair for this proceeding to take the form of the carriers seeking and obtaining from this Commission a report intended to equip them to go to the North Carolina Commission, if you please, and force through a revision there of which the North Carolina Commission as far as I can learn has no notice that any consideration is being given to here; and yet is that not the trend this case is now taking? I think it is (Rec., 341).

Exam. Waters: There is no indication that the decision will go any further than the issues in this case, is there? (Rec., 341).

Mr. Burchmore: No, but I understand counsel and the witness were answering as to what they were going to do, and it looks to me as though they were seeking to obtain general approval of a scale here on the ground that it is a general scale, and that then they can use that order with the state Commissions as a force to raise the state rates (Rec., 341).

By Mr. Gwathmey:

Q. Mr. Doss, if I correctly understand the facts, the carriers have heretofore stated repeatedly that the scale proposed by them in 1921 to the Georgia Commission, which is the same scale that they are now again proposing except for the 10 per cent reduction, was intended by them to be applied generally throughout the territory interstate and intrastate, is that right? (Rec., 341).

A. That is correct, yes, with the exception of Florida (Rec., 342).

There has been no secret about our position at any time and we have presented this scale to all of the state commis-

sions. It is our hope that the Interstate Commerce Commission will approve that scale in this case and in the event of such approval it is our purpose to seek to have it established generally, interstate as well as intrastate (Rec., 342).

[fol. 105] My Exhibit No. 43 shows the rates on these commodities between stations on the Coast Line in Georgia prior to April 1, 1925; the rates proposed by the carriers in 1921, reduced 10 per cent; and the single line rates prescribed by the Georgia Commission in its order of February 25, 1925, compared with the intrastate mileage scales on these commodities applicable between stations on the Atlantic Coast Line Railroad in other states through which it operates (Rec., 343).

Exhibit 43 was received in evidence (Rec., 343).

As to Virginia, in every case the present Virginia intrastate rates are higher than those suggested by the carriers. There is a very substantial movement of sand, gravel and crushed stone, under the present Virginia intrastate mileage scales applicable between points on the Atlantic Coast Line Railroad (Rec., 343).

There are no joint line scales applicable intrastate in Virginia, the joint rates being made on lowest combination (Rec., 343).

In North Carolina, the intrastate rates on crude clay and on flagging stone are substantially higher than the carriers' proposed scale (Rec., 343).

The North Carolina scales on chert gravel, sand, slag and crushed or rubble stone are substantially the same as the carriers' proposed scale. For distances 35 miles and under, and for 140 miles and over 70 miles, the carriers' proposed scale is lower, but for distances 65 miles and over 40 miles, and for 300 miles and over 150 miles, the North Carolina scale is slightly lower than the carriers' proposed scale (Rec., 344).

Prior to December 15, 1921, the North Carolina intrastate rates on these commodities were, particularly for short distances, higher than those which the Georgia carriers had, in November, 1921, submitted to the Georgia [fol. 106] Commission. The North Carolina shippers had complained to the North Carolina Commission, particularly

with respect to the rates for short distances, which rates they contended were altogether out of line, due to the flat increase of 20 cents per ton made under General Order No. 28. After the hearing, the North Carolina Commission held that the rates on sand, gravel and stone should be the same, and fixed a new mileage scale for application locally and jointly between points on the North Carolina trunk lines (Rec., 344).

My Exhibit No. 44 is a copy of the North Carolina Commision's report and order of November 25, 1921, which sets out in some detail the circumstances under which the North Carolina rates were changed (Rec., 344).

Exhibit 44 was received in evidence (Rec., 344).

Mr. Doss: Because of the reductions which were made in the rates theretofore in effect, the rates which became effective December 15, 1921, were not, on July 1, 1922, reduced 10 per cent under I. C. C. Docket No. 13293 (Rec., 345).

On page 4 of Exhibit 43 there is shown under the column headed "Clay Gravel (unwashed)" a mileage scale beginning with 57 cents at 5 miles, and extending to 147 cents at 300 miles. These are municipal rates and applicable only on clay gravel, used in the building of public roads (highways), in the State of North Carolina, in which the state, towns or counties have no interest; the tariffs containing these rates so restrict them. They were first established in October, 1913, as result of the North Carolina Commission's Circular No. 193. My Exhibit No. 45 is a copy of the North Carolina Commission's report and order of September 20, 1913, which explain the circumstances under which these municipal rates were established (Rec. 345).

Exhibit 45 was received in evidence (Rec., 345).

[fol. 107] The North Carolina Commission prescribes a joint line scale applicable between points in North Carolina on railroads exceeding 75 miles in length; I will later on deal with this joint line scale (Rec., 345).

The South Carolina Commission has not prescribed specific commodity rates on chert or slag. The scales prescribed by the South Carolina Commission on crude clay

and flagging stone are substantially higher than the carriers' proposed scale. The South Carolina Commission's scale on gravel and crushed or rubble stone is substantially the same as the carriers' proposed scale. It is the same or higher, except for 50 miles it is 85 cents, while the carriers' proposed scale is 86 cents; for 130, 140 and 150 miles the South Carolina Commission's scale is 120, 125 and 130 cents, as against the carriers' proposed scale of 122, 126 and 131 cents, respectively (Rec., 346).

On sand, the South Carolina scale is substantially the same as the carriers' proposed scale, except that for 50 miles the South Carolina scale is 85 cents, as against the carriers' proposed scale of 86 cents; for distances 100 miles, and over 70 miles, the South Carolina scale is 100 cents, while the carriers' proposed scale grades up from 95 cents to 108 cents; for distances over 150 miles the South Carolina Commission's scale runs from 130 cents to 160 cents, while the carriers' proposed scale runs from 121 cents to 167 cents (Rec., 346).

The present single line scales applicable on these commodities in South Carolina are substantially the same as those which have been in effect for many years, except, of course, they have been increased under General Order No. 28 and Ex Parte No. 74, and reduced under I. C. C. Docket No. 13293 (Rec., 346).

Since the termination of the period of Federal control, there have been some slight changes in the rates on sand. It developed that for the shorter distances the rates on sand, in some cases, exceeded the rates on gravel. Accord-
[fol. 108] ingly, the South Carolina Commission, by its Circulars Nos. 247 and 267, reduced its scale on sand, making it not higher than the scale on gravel (Rec., 347).

The carriers now have pending with the South Carolina Commission an application to revise the rates on sand, gravel, stone, etc., by adopting the carriers' proposed single and joint line scales (Rec., 347).

There are no joint line scales applicable on these commodities intrastate in South Carolina. Joint rates are made on combination using 80 per cent of the local rates to and from junction points as factors, subject to full combination observing the principles of the Combination Rules Tariff as maximum. The carriers' proposed joint line scale

will substantially reduce the existing joint line rates applicable intrastate in South Carolina (Rec., 347).

The Florida Commission does not prescribe a mileage scale applicable on chert. The scales prescribed by it applicable on clay, gravel, slag and crushed stone for commercial purposes, are higher than yielded by the carriers' proposed scales (Rec., 348).

The Florida intrastate rates on sand are, we think, on a low basis, being, when originally established, Class P per car of 36,000 pounds; the Class P rates in Florida are lower than the Class P rates in Georgia. They were established at the instance of the Florida Commission, and were in the nature of a compromise of litigation which had extended over a period of about ten years. The present rates are shown under Column 13, page 5, of Exhibit No. 43. For distances under 45 miles the rates are higher than proposed by carriers; for distances beyond 45 miles, the Florida rates range from 83 cents to 172 cents at 400 miles, while the carriers' proposed scale ranges from 86 cents to 189 cents (Rec., 348).

There are shown in the exhibit, under Column 4, between [fol. 109] points in Florida, on clay, gravel, sand and crushed stone, mileage scales of rates applicable only on shipments consigned to state, county or municipal authorities, to be used by such authorities for state, county or municipal roads, streets or bridges. These municipal rates, when first established in 1911, ranged from 40 cents to 100 cents per ton at 300 miles. Subsequently, those applicable on sand have been revised so as not to exceed the commercial rates on sand. There have been no other changes except under General Order No. 28, Ex Parte No. 74 and I. C. C. Docket No. 13293. The rates on clay were increased 25 per cent under General Order No. 28, whereas, on the other commodities, the rates were increased 20 cents per ton (Rec., 349).

There are no joint mileage scales applicable intrastate in Florida. Joint rates are made on combination. Where two lines are involved 90 per cent of the locals, and where more than two lines are involved 80 per cent of the locals, are used as factors. In addition to this deduction, the rates are subject to the Combination Rules Tariff, Agent Jones' I. C. C. No. US-1. Joint municipal rates are made on full

combination, except that the factors have been adjusted to reflect the reductions required under the Combination Rules Tariff (Rec., 349).

Q. Does your Exhibit No. 43 also show a comparison of your proposed rates with the present intrastate rates in Alabama?

A. Yes, sir. The Alabama intrastate rates on sand were, effective October 1, 1907, in accordance with an Act of the Alabama Legislature, made the same as then in effect intrastate in Georgia. There have been no subsequent changes, except the general increases under General Order No. 28 and Ex Parte No. 74, and the 10 per cent reduction under I. C. C. Docket No. 13293. As I have previously pointed out, the Georgia intrastate rates were slightly increased, effective April 1, 1915, but no corresponding change was made in the Alabama rates (Rec. 349).

[fol. 110] The sand rates established between points in Alabama in 1907, have subsequently been made applicable also on chert and gravel. These rates are the same as, or higher than, the carriers' proposed scale, except that for distances 55 miles and over 45 miles, the Alabama scale is 83 cents, while the carriers' proposed scale is 86 cents for 50 miles and over 45 miles, and 90 cents for 55 miles and over 50 miles. For distances over 65 miles, the present Alabama scale grades up from 90 cents to 123 cents at 160 miles, while the carriers' proposed scale for these distances runs from 95 to 135 cents per ton (Rec., 350).

Crude clay between points on the Atlantic Coast Line Railroad in Alabama moves under the Class N rates, which are substantially higher than the carriers' proposed scale (Rec., 350).

The rates on slag between points on the Atlantic Coast Line Railroad in Alabama are in every case higher than the carriers' proposed scale; they were established, effective June 10, 1921, at the request of shippers in the Birmingham district (Rec., 350).

The rates on crushed or rubble stone between points in Alabama are substantially higher than carriers' proposed scales; they were established the first time effective July 24, 1915, and were made the same as then in effect on rough stone, carloads; they have not since been changed, except

that they were increased 20 cents per ton of 2,000 pounds under General Order No. 28, and further increased 25 per cent under Ex Parte No. 74, and reduced 10 per cent under I. C. C. Docket No. 13293 (Rec., 350).

The rates on rough flagging stone between points in Alabama were first established in 1907, as result of the Act of the Alabama Legislature, and were made the same as in effect at that time intrastate in Georgia (Rec., 351).

There are no joint mileage scales applicable on these [fol. 111] commodities in Alabama. The joint rates are made on combinations using 90 per cent of the local rates to and from the junction points as factors (Rec., 351).

The standard minimum weight in South Carolina is 20,000 pounds. It is a little out of date, but still the minimum. The minimums on Exhibit 43, twenty, twenty-five, thirty and thirty-six thousand pounds, are the minimum weights in fact, but do not really mean anything. It just happens to be a minimum that has been in effect for many years. They never changed them even when they changed the rates (Rec., 351).

On September 21, 1921, under its Docket No. 4136, the Alabama Public Service Commission issued citation, addressed to all of the Alabama carriers, to show cause why that Commission should not establish a just and reasonable scale of freight rates on all commodities moving between stations in Alabama, and assigning the citation for hearing on November 7, 1921, at its offices in Montgomery, Alabama. The citation stated that at this hearing the Commission would also hear evidence regarding any and all rate discriminations in Alabama, for the purpose of removing same (Rec., 352).

At the hearing in Montgomery, on November 7, 1921, representatives of the carriers submitted to the Alabama Commission suggested class and commodity mileage rates and exceptions to Southern Classification, which were, practically without exception, the same as had previously been submitted by the Georgia carriers to the Georgia Commission (Rec., 352).

The Alabama carriers presented their testimony, in justification of the proposed revision submitted by them, at hearings which were held by the Alabama Commission beginning February 6, 1922 (Rec., 352).

Testimony of shippers, and others, was not immediately taken, but subsequently, from time to time, the Alabama Commission has heard, and in some instances completed, the taking of testimony on various commodities (Rec., 352).

The testimony of certain of the shippers with respect to [fol. 112] the proposed rates on sand, gravel, stone, slag, etc., was taken by the Alabama Commission at hearings held in Montgomery on July 8 and 9, 1925. It was understood at the time that there would be a subsequent hearing, at which further testimony from the public and the rebuttal testimony of the carriers, with respect to the rates on these commodities, would be taken (Rec., 353).

The Alabama Commission set the further hearing for October 6, 1925, but the hearing was postponed. The Alabama Commission, under date of February 5, 1926, has indefinitely postponed its investigation of the rates on these commodities, pending determination by the Interstate Commerce Commission of the issues involved in I. C. C. Docket 17517, and related cases. In this connection, I file as Exhibit No. 46 a copy of the Alabama Public Service Commission's order of February 5, 1926 (Rec., 353).

Exhibit 46 was received in evidence (Rec., 353).

I would understand from its order of February 5, 1926, that the Alabama Commission has indefinitely withheld a decision on the matter of sand and gravel awaiting the action of the Interstate Commerce Commission in this case (Rec., 353).

My Exhibit No. 47 shows specific commodity rates which have, since July 1, 1922, been prescribed for application via Atlantic Coast Line Railroad on Alabama intrastate traffic by the Alabama Public Service Commission. The exhibit shows the distances and what the rates would be on the carriers' proposed scale; the rates formerly in effect are also shown (Rec., 354).

Exhibit 47 was received in evidence (Rec., 354).

The Alabama Commission by its order dated June 6, 1922, Docket No. 4241, prescribed rate of 81 cents per ton of 2,000 pounds on sand and gravel, c. l., from Montgomery to Dothan, Alabama. It found that the previous rate of 113.3 cents ton was unreasonably high and prejudicial, in [fol. 113] that it exceeded rates of other carriers for ap-

proximately the same distance and under similar traffic conditions. The record made at the hearing of the case indicates quite clearly that the Commission had in mind the then existing rates from Alabama and Georgia producing points to the Birmingham and Atlanta districts. Subsequently, under Docket No. 4373, the Commission's order was amended, July 1, 1923, to provide that the 81 cents rate was not subject to the Combination Rules Tariff. The Commission, by approval No. 311, of April 28, 1924, authorized an increase in this rate from 81 cents to 90 cents. The Commission concluded that the 90 cent rate, which it had in mind prior to July 1, 1922, should not have been subjected to the 10 per cent reduction (Rec., 354).

By order dated January 24, 1924, in Docket No. 4453, the Alabama Commission fixed rate of 81 cents from Montgomery to Ozark, Alabama. This was the rate then in effect to Dothan, a point beyond Ozark (Rec., 355).

Recess for the day.

[fol. 114] February 18, 1926.

R. J. Doss resumed the stand and testified further on direct examination:

Mr. Gwathmey: I shall try not to trespass upon your patience, but this is a very important case, and I want to explain for the record the scope of our testimony with which we were dealing at the adjournment yesterday. You will recall that a witness for the complainants filed Exhibit 15, showing the rates on sand from Montgomery. We desire to explain the facts upon which the carriers rely in contending that those rates are unduly low and should not be used for comparative purposes (Rec., 356).

Mr. Doss: Cantalow Spur is on the Western Railway of Alabama, about 9 miles west of Montgomery. The rates from Cantalou Spur, which are shown on my Exhibit No. 47, were fixed by the Alabama Railroad Commission. That Commission issued a report in the original case in fixing those rates and when the case was reheard on the petition of the defendant carriers, issued a supplementary report (Rec., 357).

By Mr. Gwathmey:

Q. According to the best of your knowledge and belief, as based upon that report, upon what basis were those rates fixed by the Alabama Commission? (Rec., 357.)

Mr. Burchmore objected on the ground that the report should speak for itself. After discussion, the witness was given permission to file a copy of the report of the Alabama Commission within ten days.

(Insert a paragraph telling about this being sent in, which I will dictate later.)

[fol. 115] My Exhibit 48, consisting of 12 pages, shows the scales which are here in issue, compared with the mileage scales applicable on intrastate traffic between various stations on the Atlantic Coast Line Railroad, and is self-explanatory (Rec., 360).

Defendant's Exhibit No. 48 was thereupon received (Rec. 360).

My Exhibit No. 49 is a similar statement consisting of 13 pages, comparing the scales here in issue with the mileage scales on these commodities applicable between points on lines other than the Atlantic Coast Line in southern territory (Rec., 360).

Defendant's Exhibit No. 49 was thereupon received (Rec., 360).

My Exhibit No. 50 is along similar lines and compares the scales here in issue with the averages of the interstate and intrastate commodity mileage scales applicable in southern territory (Rec., 360).

Defendant's Exhibit No. 50 was thereupon received (Rec., 360).

It is proper to explain that the averages of the scales covered by this exhibit are the same averages as were filed in the C. & W. C. Case, I. & S. Docket 1848. The Commission in its report in that case referred to the averages as being the averages of the intrastate rates in South Carolina, Georgia, North Carolina and Tennessee. That statement is not exactly correct. The averages were prepared

during the period of Federal control and embrace the mileage scales interstate and intrastate throughout the southern region. While my exhibit shows the averages as being of the present scales, that is not altogether correct. They are the averages taken during Federal control, increased 25 per cent under Ex Parte 74 and reduced 10 per cent effective July 1, 1922. To the extent that there have been changes in those scales since Federal control, the averages shown in this exhibit would not reflect the exact average of the present scale (Rec. 361).

Joint-line scales are not generally applicable in southern [fol. 116] territory. Prior to the period of Federal control, there was not so far as I know, any joint line scales in southern territory, except in the state of North Carolina, the intrastate rates in some cases in that state being on a joint line scale (Rec., 362).

My Exhibit No. 51 compares the joint trunk line scales here in issue with all of the joint line scales applicable on these commodities in southern territory (Rec., 362).

Defendant's Exhibit No. 51 was thereupon received.

Mr. Doss: In the last column is shown under the heading "Agent J. J. Cottrill's I. C. C. No. 554", the joint line scale applicable intrastate in North Carolina. In the two columns to the left of that column respectively are the joint line scales of the Southern Railway applicable between Southern Railway and affiliated lines and the Clinchfield Railroad and Southern Railway, that is it is applicable between stations on the Clinchfield Railroad on the one hand and Southern Railway stations on the other. The exhibit shows that the joint line scales applicable on the Southern Railway and Clinchfield Railroad are identically the same as those which the carriers are here proposing. The North Carolina intrastate scale was established by the North Carolina Corporation Commission's Circular No. 224, effective December 15, 1921, a copy of which is attached to my Exhibit No. 44. The North Carolina joint scale is in most cases lower than the carriers' proposed scale, although in some cases the rates are the same, and for distances 100 miles and over 85 miles, the carriers' proposed scale is lower than the North Carolina joint scale. The North Caro-

lina joint scale is throughout higher than the Georgia Commission's joint scale applicable on washed gravel, slag, crushed stone, etc., and as the North Carolina Commission applies the same scale on all of these commodities, it naturally follows that the North Carolina scale is substantially [fol. 117] higher than the Georgia Commission's scale on sand, gravel, etc. The carriers' proposed scale when submitted to the Georgia Commission in 1921 was higher than the carriers' proposed single line scale, beginning with 30 cents a ton for the shorter distances, and the differential gradually fading to 10 cents for 460 miles, the maximum distance covered by that scale. Both scales were reduced 10 per cent effective July 1, 1922, consequently the differentials are now 10 per cent less than those originally submitted: in other words, in the present scale, the differentials range from 27 to 9 cents (Rec., 364).

In making up my exhibits, I find one slight error in the joint line scale covered by the carriers' original proposal, and that is for 240 miles and over 220, the original joint line scale was shown as $1.99, the proposed single line scale for those distances was $1.70, and on the basis of the joint line differential of 20 cents proposed at that time, the joint line scale should have been $1.90 instead of $1.95. Reduced to the present figures, it should be $1.71 instead of $1.76. The North Carolina Commission's joint scale was made differentials beginning with 20 cents for distances 100 miles and under, and gradually was reduced to 10 cents for 400 miles (Rec., 364).

The expense of handling this traffic over two or more lines is greater than the expense of a one-line haul. The Georgia Commission's proposed single line scale is, we think, too low, when the entire revenue accrues to the line performing the single line scale. But when we get beyond 100 miles, they allow no addition when the service has to be performed by two or more lines, although the expense is greater than for the single line service (Rec., 365).

Q. When shipments move in this territory for distances over 100 miles are they or not usually over more than one line?

A. Well, that depends; take this particular traffic moving within the state of Georgia to points on the Coast Line, out-

side of sand there is no production of it on the Coast Line, and naturally it would have to move two or more lines (Rec., 365).

[fol. 118] As I have just stated, prior to the period of Federal control, there were no joint line scales applicable intrastate in Georgia or generally throughout the south, and following our submittal on revised rates to the Georgia Commission in 1921, that Commission has since issued orders prescribing revised rates, in which are shown both single and joint line scales (Rec., 365).

My Exhibit No. 52 shows in cents per ton of 2,000 pounds for representative distances, the amounts by which the joint line rates exceed the single line rates on Classes 6 and D and on various commodities under the carriers' proposed scales, and under the mileage scales which have since 1921 been prescribed by the Georgia Public Service Commission (Rec., 366).

Defendant's Exhibit 52 was received in evidence (Rec., 366):

On waste wood, shown on page 2 of the exhibit, no differentials are shown for distances beyond 260 miles, that is for the reason that neither a single line nor a joint line scale was prescribed for those longer distances. On brick and fire clay the joint line differential for 70 miles and under is 20 cents, and for 80 miles and over 70.10 cents, and for distances beyond 80 miles, nothing. The carriers had originally suggested that the trunk line scale on brick and clay products be made higher than the single line scale beginning with 54 cents at 5 miles, and scaling down to 83 cents for 460 miles, those differentials reflected the 10 per cent reduction. However, it was found in undertaking to work out specific rates under these scales, many departures therefrom would be necessary because of fourth section difficulties. The situation was further complicated by reason of the desire of certain carriers and shippers that large groups of origin be observed. There were also very strong objections from the interested shippers to both the single and joint line scales. The carriers finally concluded that the best solution of the difficulty would be to reduce the joint line differentials, and to merge the single and joint line scales at 80 miles. All of that was set out in I. & S. Docket 1885, the Brick and Clay Products Case (Rec., 367).

[fol. 119] My Exhibit No. 53 shows similar information as to how the Alabama Commission has dealt with the two-line differentials in its scales.

Defendant's Exhibit No. 53 was received (Rec., 367).

All of these scales have been established since 1922 in somewhat the same manner as have the Georgia Commission's scales (Rec., 367).

My Exhibit No. 54 simply shows for comparative purposes certain differentials applying in the case of rates on lumber. We had originally suggested somewhat the same character of joint line differentials on lumber; by that I mean, they started out at the highest figure for the low distances, and faded away to a [illegible] figure for the long distances, but in working out the rates on lumber in Carolina territory, and from the southeast to Carolina territory, we ran into somewhat the same sort of difficulties we had encountered in the brick adjustment, and it became necessary, as we saw it, to merge the scales at 160 miles (Rec., 367-368).

Defendant's Exhibit No. 54 was received (Rec., 368).

It will be seen from Exhibit 54 that we increased the scale to compensate for the loss on the joint line scale in that it was not made higher than the single line scale first proposed (Rec., 368).

The rates referred to in Exhibit 54 have been published but are under suspension. I cannot give the tariff reference. It is lumber from the southeast to Carolina territory and between points in the Carolina territory (Rec., 369).

The lumber rates shown on Exhibit 54 as the Georgia scale are the scale which the carriers submitted to the Georgia Commission. It has not been approved by the Georgia Commission (Rec., 370).

Exhibit No. 55 is simply excerpts from certain decisions of the Interstate Commerce Commission in other cases dealing with the question of differentials single line versus joint line scales, and is offered for the convenience of all [fol. 120] parties (Rec., 370).

Defendant's Exhibit 55 was received in evidence.

My Exhibit No. 56 is simply a statement showing the extent of the movement of these commodities over various

carriers in southern territory and also shows the average load, as indicated by the reports to the Interstate Commerce Commission. It contrasts this movement in the south with movements in other districts of the United States and shows the very great importance of this tonnage in the south (Rec., 371).

Defendant's Exhibit No. 56 was received.

Exhibit 57 shows the carriers' proposed scales and the Georgia Commission's scales applicable for single and joint line hauls on these commodities and the earnings in mills per ton per mile thereunder. Since this exhibit was prepared, I notice on page 1 in the third column, opposite 10 miles, the figure 100 should be 50, under the carriers' proposed scale (Rec., 372).

Defendant's Exhibit No. 57 was thereupon received (Rec., 372).

It appears that for distances beyond 200 miles, the earnings under the carriers' proposed single line scale are less than 7 mills and beyond 240 miles under their proposed joint line scale the earnings are less than 7 mills. We do not consider it very desirable traffic, if it pays less than 7 mills per ton per mile, especially for distances as short as 200 miles (Rec., 372).

If the Georgia Commission's single and joint line scales on crushed stone, slag and washed gravel, their lower scales, be extended at the same rate of progression as was observed for distances beyond 260 miles, that is 10 cents per ton for each 60-mile block, the rate at 500 miles would be $1.90 per ton, or 3.8 mills per ton per mile. At 800 miles, the scale would be $2.40 per ton, or 3 mills per ton per mile. At 1,040 miles, the scale would be $2.80 per ton, or 2.7 mills per ton per mile (Rec., 373).

[fol. 121] Our earnings on crushed stone, slag and washed gravel, under an extension of the Georgia Commission's scale would get down as low as 2.7 mills per ton per mile. On sand and gravel, it would be relatively lower by 10 cents per ton, if the scale throughout was made the same differential under stone (Rec., 373).

The single and joint line scales are the same in the Georgia Commission's order beyond 100 miles, but sand

and clay gravel are made 10 cents less than stone, slag and washed gravel (Rec., 373).

Commissioner Lewis: Who moves this stuff any thousand miles?

Mr. Gwathmey: There are some pretty long movements. I said practically nothing, 2.7 mills per ton per mile I would say is pretty near nothing, but there are movements, not a great many, on which our earnings get down considerably below 7 mills per ton per mile, and even below three or four mills per ton per mile, and we regard traffic of that sort as paying mighty little. We are going to show something about the length of some of these movements (Rec., 374).

The proposed joint line scale of the Georgia Commission will apply to hauls over two or more lines, and when one of those carriers receives only a small part of a long haul, that is they perform a small part of the extended haul, its revenue per ton mile will be no more than yielded by the through rate for the longer haul, unless of course in the division of the rate the line performing only a small part is allowed a greater prorate proportion than the carrier or carriers performing the greater part of the haul, but if such allowance is made, the shrinkage comes out of a very low proportion received by the carrier or carriers performing the greater part of the haul (Rec., 375).

In illustration, the Georgia Commission's scale on sand and gravel for joint haul of 400 miles is $1.70 a ton, which yields, as shown in my exhibit, 4.2 mills per ton per mile. If this traffic moves 50 miles over one railroad and 350 miles over another, and the rate is divided on a mileage [fol. 122] prorate, the carrier performing the 50 mile haul will receive only 21 cent per ton, which for a car of 50 tons yields only $10.50. On the other hand, if the rate be divided using the local rates of each railroad as factors, the lien performing the 50 mile haul will receive one-third of the rate, or 57 cents per ton. This leaves the carrier performing the 350 mile haul a proportion of $1.13, which yields only 3.2 mills per ton per mile (Rec., 375).

The movement of this traffic is very frequently over at least three lines of railroad, and particularly so to points on the Atlantic Coast Line in south Georgia. Considerable of this traffic originates at points on the Georgia Rail-

road. The principal clay gravel production in Georgia is at Norris, Georgia, a point on the Georgia Railroad. Te be delivered at points on the Atlantic Coast Line in Georgia, it is always necessary that it move over three or more separate railroads. If the total distance is 400 miles, and the haul over the initial carrier is 100 miles, and the intermediate carrier 100 miles, and the destination carrier 200 miles, the rate prescribed by the Georgia Commission would be $1.70 a ton; of course, if it is divided on a mileage prorate, the initial carrier would receive one-fourth of the rate, or 43 cents a ton, the intermediate carrier one-fourth, 42 cents, and the destination carrier one-half, or 85 cents, and that is a per ton per mile yield of 4.2 mills for each line. On a carload of 50 tons the initial carrier would receive only $21.50 for the haul of 100 miles, or 21.5 cents per car mile. The destination line would receive $42.50 or 21.25 cents per car mile. Now, if the rate be divided using the local rates of each carrier as factors, the initial carrier will receive 31 per cent, the intermediate 30 per cent and the terminal carrier 39 per cent, equivalent to 53, 61 and 66 cents per ton respectively. Now, on this basis, the destination carrier for a haul of 200 miles would receive only 66 cents per ton, which is 3.3 mills per ton per mile (Rec., 376).

These are the earnings under the scale prescribed by the [fol. 123] Georgia Commission and where I have referred to divisions based on the local rates of each line as factors, they are on the basis of the divisions fixed by the Georgia Commission. Regardless of how rates are divided, they are so low that no one of the carriers would receive what is considered reasonable revenue. Of course, any joint rate has to be divided somehow (Rec., 377).

Commissioner Lewis: Is this a division case in any feature of it? (Rec., 377).

Mr. Gwathmey: I could understand that ordinarily no question of divisions is involved where the reasonableness of a rate alone is in issue, but there are two reasons why it seems to me it is proper to refer to it here; one is, as Mr. Doss has just stated, the Georgia Commission in its order fixed the basis of divisions; the second reason is that, as we stated a while ago, we have taken every conceivable basis of divisions, and undertaken to show by this statement which Mr. Doss has just made that on no one of those bases

would there be adequate revenue or could there be adequate revenue to the participating carriers (Rec., 377).

Commissioner Lewis: The difference on 200 miles when you use that as an illustration, is 14 cents, the difference between $1.30 and $1.44; would that make any material difference in this factor of divisions that you are analyzing now? (Rec., 377).

Mr. Doss: We think when you come to divide these rates, 1 cent is a thing to be fought over, and 19 cents might change it a whole lot. The rates are so low we just can't divide them on our own scale (Rec., 378).

Mr. Brooker: I have tried not to object to any of this testimony going into this record, but it does seem to me in comparing divisions that it should take into consideration the divisions they get on other traffic, and make a comparison with that, rather than to attempt to show that their earnings under a division of the through rate on sand and gravel are low in proportion to what they get for the local [fol. 124] movement; in other words, on all traffic the earnings under divisions are considerably lower than that they get on the local traffic, say for instance, 7 mills at 200 miles (Rec., 379).

Mr. Gwathmey: That was not the purpose. We are not comparing the divisions received here with the divisions received on other business.

Mr. Brooker: If you did that, it would be all right (Rec., 379).

Mr. Burchmore: Is this question wide open, or is it restricted?

Mr. Gwathmey: I regard this as an exceedingly important element in the case. In a dispute as to the reasonableness of the rate, the question of the division of the rate between the participating carriers is not ordinarily relevant. That is not what we are trying to show here. Nor do we undertake to compare the divisions that any of the lines receive on sand and gravel with the divisions that are received on other traffic. The purpose is to show that regardless of what basis of divisions is used, whether a mileage prorate or on the basis of the local rates, this business which moves very largely over two or more railroads would move under rates so low that it would not be possible for any one of the carriers to obtain reasonable earnings. I submit that is pertinent evidence (Rec., 380).

Mr. Burchmore: I move to strike all reference to the question of divisions on the ground that it is irrelevant and immaterial to this inquiry. If this objection is not sustained and the evidence is not stricken, I propose to cross-examine on the question of divisions (Rec., 381).

Mr. Mohr: The question of divisions in this particular case goes to the earnings that the carriers will obtain on traffic handled over two or more lines under a scale which the carriers feel is almost on the verge of being non-compensatory, and it is one of the methods we have adopted as showing the low measure of the rates (Rec., 381).

[fol. 125] Mr. Cotterill: Insofar as the evidence may have been tendered in support of the theory that by reason of the measure of the rates the assessment of an additional charge for joint haul is necessary, we support the carriers that the evidence is relevant.

Examiner Waters: I think for that purpose it is relevant.

Mr. Gwathmey: I hope the Examiner's ruling does not mean that it is not relevant for any other purpose (Rec., 381).

Mr. Cotterill's point was that he had no objection to evidence of this sort as bearing upon the question of what was a proper differential between a joint line and a single line rate.

Mr. Cotterill: I was not considering the question of what would be a proper differential, but it seemed to me that insofar as the evidence is tendered to indicate that on commodities of this character, where the measure of the charges is inevitably lower than on most traffic, it is appropriate to indicate the necessity for a joint line differential of some measure since if the single line rate be divided between two carriers, it would make the revenue non-compensatory (Rec., 382).

Mr. Gwathmey: I would like the record to show that we ask that this testimony be received for the purpose of showing, as we are attempting to do, that the scale as fixed by the Georgia Railroad Commission is unduly and unreasonably low (Rec., 382).

Mr. Price: I don't want to enter into cross examination, but I think it is proper right at this time that the record should show just why the Georgia Commission prescribed

these divisions that are apparently complained of. The law under which the Georgia Commission was created requires of the Commission that in estabishing joint rates, it shall fix the divisions of those rates, and I wanted to ask Mr. Doss if in this particular case covering sand, gravel, etc., if the Georgia Commission did not leave it optional with the [fol. 126] carriers to fix their own divisions? (Rec., 383.)

Mr. Doss: That is correct; the order that is under attack here states in paragraph 7 that the joint rates provided for herein are to be divided on the same basis as provided in the Commission's class rate order dated February 28th, effective May 1, 1923, and in that order they did fix this basis of using the local of each line as factors, but leaving it optional with the carriers to arrange other divisions if they saw fit. But these rates on sand and gravel are so low that if we didn't have this order of the Georgia Commission, I don't know what we would do about divisions, we would never have been able to arrange any satisfactory divisions (Rec., 383).

Exam. Waters: We have had enough of divisions; we will proceed with the testimony (Rec., 383).

Mr. Gwathmey: I don't understand your ruling to be that it was excluded? (Rec., 384.)

Exam. Waters: No.

My next Exhibit is No. 58, which is a statement showing for representative distances rates in cents per net ton, revenue per car and per ton per mile on basis of average per car loading of sand, gravel, crushed stone and slag, compared with the rates and revenue on other low grade commodities under the mileage scales proposed by the carriers and as prescribed by the Georgia Public Service Commission (Rec., 384).

Defendant's Exhibit No. 58 was received in evidence (Rec., 384).

Mr. Doss: While it is true that sand, gravel, slag and crushed stone are very low grade commodities, and load heavily, and are handled in open top cars, with a minimum risk, these conditions are reflected in the rates that the carriers have suggested. It will be noted from the exhibit that for hauls of 25 miles, the per car earnings on sand,

[fol. 127] gravel, etc., on the basis of the scale suggested by the carriers are lower than on any other commodity except waste wood. This waste wood scale is a sort of transit arrangement under which waste wood, stumps and things of that kind are gathered up in the fields where the land is being cleared, and carried to distillation or reduction plants for the manufacture of naval stores and products of that kind (Rec., 387).

The exhibit shows that the carriers' proposed rates on sand and gravel are, on the whole, generally lower than on the other commodities shown (Rec., 385).

My Exhibits 59 to 62 show various comparisons of the carriers' proposed rates on these commodities with other rates (Rec., 385).

Exhibit No. 60 compares the rates here in issue with those in effect from Lylesville, North Carolina, Peedee, North Carolina, and Medlin, Alabama. All are important shiping points (Rec., 385).

Defendants' Exhibits 59 and 60 were received (Rec., 385).

Exhibit No. 61 compares the rates here in issue from Steel's Creek, South Carolina, and other shipping points in that vicinity on the C. & W. C. Railway. The rates in effect from Steel's Creek are also in effect from the other shipping points and are on the basis of the carriers' proposed scale. They were approved by the Commission in I. & S. Docket No. 1848 (Rec., 386).

Defendants' Exhibit No. 61 was received.

Exhibit No. 62 compares the current rates from Montgomery, Alabama, with the rates here in issue. It will be seen from this exhibit that practically without exception the present rates from Montgomery are on the carriers' proposed scales (Rec., 386).

Defendants' Exhibit No. 62 was received (Rec., 386).

My Exhibit No. 63 shows the rates on sand and gravel [fol. 128] from pits in the Montgomery, Alabama, district to representative points on the Atlantic Coast Line Railroad in effect prior and subsequent to May 14, 1923 (Rec., 386).

Defendants' Exhibit 63 was received.

Prior to May 14, 1923, there was no uniformity in the basis which was observed in establishing rates on sand and gravel from the Montgomery district to points on the Atlantic Coast Line Railroad. Pits are located within the switching limits of Montgomery, and Jackson's Lake and Prattsville Junction and Cuseda on the Louisville & Nashville Railroad, all three of which are within 10 miles of Montgomery, at Cantalou Spur on the Western Railway, 9 miles from Montgomery, and at various points on the Western Railway of Alabama east of Montgomery and as far as Chehaw, 39 miles from Montgomery. Generally speaking, the rates which were in effect prior to May 14, 1923, from the Western Railway pits, of which Chehaw and Cooks are representative, were the same as from Montgomery. In some cases, however, the rates from Montgomery have been revised on the basis of carriers' proposed scale, without a corresponding revision from the Western Railway pits. From the Louisville & Nashville Railroad pits, of which Jackson's Lake is representative, the rates were then made about 10 cents per ton higher than from Montgomery. The situation gave considerable trouble, particularly because of the higher rates from the Louisville & Nashville Railroad pits, and it was determined to revise the rates on the basis of the carriers' proposed scale, except that to points 150 miles or more from Montgomery, the rate yielded by the scale from Montgomery was applied from all pits in the district, including those on the Western Railway and the Louisville & Nashville Railroad. The adjustment which became effective May 14, 1923, as shown in the exhibit, was on the revised basis which I have just mentioned. An error was made, however, in applying the group basis from the Western Railway pits located more than 15 miles from [fol. 129] Montgomery. The carriers proposed to correct this error by applying the Montgomery rates from pits within fifteen miles of Montgomery to points on the Atlantic Coast Line 150 miles or more distant from Montgomery; from pits more than 15 miles from Montgomery, the rates are made on the basis of the joint or single line mileage scale as the case may be (Rec., 387-388).

Now, my Exhibit No. 64 shows the distances, the present rates and the rates yielded by the mileage scale from Mont-

gomery, Cooks and Chehaw to representative points on the Atlantic Coast Line (Rec., 388).

Defendants' Exhibit No. 64 was received in evidence.

Mr. Doss: We do not propose at this time to change the present basis from Cooks, but from Chehaw the rates will be changed to the basis of the mileage scale applied to the distance from Chehaw (Rec., 388).

My Exhibits 65, 66, 67, 68 and 69 are simply additional rate comparisons bearing on the reasonableness of the rates in issue. I want to say as to No. 65 that the present rates from Williams, Georgia, to points from Lovett, Florida, to Hampton Springs, Florida, inclusive, are less than the carriers' proposed scale. The figures shown under the column headed "Carriers' proposed scale" are the trunk short line scales, those stations being located on the South Georgia Railroad (Rec., 389).

Exhibits 66, 67, 68 and 69 compare various rates on slag with the carriers' proposed scale and the Georgia Commission's scale. Exhibit No. 69 covers the present rates on slag from the Birmingham district. It will be seen from this exhibit that the present rates from the Birmingham district on slag are either on or higher than the carriers' proposed scale. That is of interest in connection with the other exhibits which are filed showing the rates on gravel from Montgomery to be on the carriers' proposed scale (Rec., 389).

[fol. 130] Defendants' Exhibits Nos. 65, 66, 67, 68 and 69 were received.

My Exhibit No. 70 shows the former and present rates on sand and gravel from Norris, Georgia, to Atlantic Coast Line stations in Georgia, the Atlantic Coast Line's distances and local rates from Albany, Georgia, together with its proportions out of the former and present rates (Rec., 390).

Mr. Burchmore: I object to the exhibit on the ground that it purports to show present and proposed divisions and introduces matter not material to or at issue in this proceeding.

Exam. Waters: The objection will be noted.

Defendants' Exhibit No. 70 was thereupon received.

Mr. Brooker: I also object because of the attempt to compare the divisions under the present through rates with local rates from division points (Rec., 390).

Mr. Burchmore: You will notice on Exhibits 70 and 71, that one of the carriers gets increased earnings under the reduction in rates and the other carrier gets reduced earnings. Are we going into the question of the propriety of increasing the division to the initial carrier when the Georgia Commission reduces the rate? That is one point of my objection (Rec., 390).

Mr. Gwathmey: These two exhibits, as stated, were for the purpose of showing the discrimination and the effect of the discrimination, as bearing upon our thirteenth section petition. Testimony has already been offered here to the effect that various tonnage that formerly moved into Georgia from points out of the state have since 1925, when the Georgia Commission's order became effective, moved now from points in the state, and we are merely trying to show how that situation has affected the revenues of the interstate carriers, and for that purpose of pointing out what the Atlantic Coast Line, for example, earns on business in one case as compared with the other (Rec., 391).

Mr. Burchmore: This does not show any loss of tonnage [fol. 131] from interstate destinations, or refer to tonnage from interstate destinations (Rec., 391).

Mr. Gwathmey: I didn't say it did.

Mr. Burchmore: You say that is what it is being used for.

Exam. Waters: We will let it in (Rec., 391).

The distances shown from Norris, Georgia, are constructed over whatever the rate basing line is, the short line. In the application of the Georgia Commission's scale, we have to use three or four lines if it makes the short line (Rec., 391).

Mr. Burchmore: I make the same objection on Exhibit No. 71 and ask for a ruling (Rec., 392).

Exam. Waters: The objection will be noted (Rec., 393).

Defendants' Exhibit No. 71 was received.

The state of Georgia formerly secured a large part of its requirements of clay gravel from C. & W. C. pits, but since

April 1, 1925, the effective date of the Georgia Commission's order, the state of Georgia has secured its clay gravel from Norris, Georgia, and other places in Georgia. Consequently, the reduction in the Georgia rates not only took away from the Atlantic Coast Line and its affiliated line, the Charleston & Western Carolina Railway, the movement from the C. & W. C. pits, and the entire freight revenue that accrued under those rates, but we were required to participate in joint rates applicable from points in Georgia and accept very much lower proportions (Rec., 393).

In my Exhibit No. 71, it will be noted that the present rate from Cooks, Alabama, to Jacksonville, Florida, is $1.89, and that the Georgia Commission's scale applied to the distance would make a rate of $1.60. Now, even under the present rate, $1.89, and allowing the line up to Montgomery only 25 cents a ton, there is left $1.64 to cover a single line haul of 390 miles. Now, that is only 21 cents per car mile on a 50 ton car. The Atlantic Coast Line not only [fol. 132] has to haul the car loaded from Montgomery to Jacksonville, but it has to return the empty (Rec., 394).

The tariffs containing the present rates on sand from the Birmingham district to South Georgia, which, as I have just shown, are on the carriers' scale, provide that those rates only apply via certain routes. For example, to Atlantic Coast Line Railroad stations, the rates apply only through Albany in connection with the Central, that being the shortest route. The rates are so low that they cannot be applied with profit via the route using the Louisville & Nashville Railroad from Birmingham to Montgomery, thence Atlantic Coast Line, which route in a number of cases is a short route (Rec., 394).

Mr. Cotterill: I ask that the part of the answer be stricken in which mention is made of a profit. Profit can be considered only as the difference between expense and related receipts and I do not understand there is any evidence as to the expense of handling the business.

Mr. Gwathmey: We will be glad to amend it and save reasonable revenue.

Mr. Cotterill: Stated in that form, it would be a mere conclusion of the witness and I have no objection to it (Rec., 395).

Well, the traffic of course is competitive as between the lines at Birmingham, and they are not going out of the

business as long as they think there is any profit in it to them (Rec., 395).

The Louisville & Nashville Railroad feels that it cannot haul freight from its connections at Birmingham to the connection with the Coast Line at Montgomery for less than 62 cents per ton; the rates are simply not high enough even on the Georgia Commission's scale to permit of that route participating and observing that minimum (Rec., 396).

The rates as now in effect do not apply via the Louis- [fol. 133] ville & Nashville Railroad (Rec., 396).

There is a very large movement of slag from Birmingham to Jacksonville. The tariff does apply via the Louisville & Nashville Railroad from Birmingham to Jacksonville, and considerable business has moved that way, but it is not moving that way any longer on account of the lowness of the rate (Rec., 396).

The present rate from the Birmingham district to Jacksonville is $2.03 per ton; if you allow the Louisville & Nashville Railroad a minimum of 62 cents from Birmingham to Montgomery, and the initial line in the Birmingham district takes an arbitrary of 34 cents, you have the total minimum to Montgomery of 96 cents a ton, of course that leaves out of the $2.03 rate, it leaves only $1.07 a ton, which would be 2.7 mills per ton per mil- for the Atlantic Coast Line, or on a 50 ton car, only 15 cents per car mile (Rec., 397).

Under the Georgia Commission's scale, the rate would be $1.60 a ton and our proportion would be 94 cents on that basis. The present rates from Birmingham are so low that the carriers themselves have found it practically impossible to arrange any divisions under those rates (Rec., 397).

Mr. Cotterill: I have refrained from assuming objections of such a character. I just take it for granted that in all of that character of question and answer, what is meant is that in the judgment and conclusion of the carriers, the charges are so low for this, that and the other thing, there is no necessity to repeat my objections constantly, on the idea that it is both a conclusion first, and secondly not supported by any definite evidence as to the profitableness of the rates (Rec., 397).

Mr. Gwathmey: That is not the purpose at all; you misapprehend if you have that idea. We have shown definite figures here for the purpose of proving to the satisfaction of everyone that it is impossible to divide the rates on a basis that will yield a reasonable return. If your question goes only to the matter as to what the carriers con- [fol. 134] sider a reasonable return, all right (Rec., 398).

Mr. Cotterill: Well, have you undertaken now, Mr. Gwathmey, to demonstrate what the return is? You have simply shown a certain table of divisions used between the carriers (Rec., 398).

Mr. Gwathmey: We have shown just how much the Atlantic Coast Line, for example, is able to get per ton per mile on the traffic for its haul, assuming that it is impossible to divide it in such a way as to allow the other carriers a fair basis of division (Rec., 398).

Exam. Waters: What is before us, the evidence is in, it is for the Commission to give it such weight as it thinks proper (Rec., 398).

Mr. Cotterill: I was only calling attention to the fact that my silence might not be taken to indicate a waiver of the original objection that I made (Rec., 398).

For the purposes of this case, the Atlantic Coast Line made a rerating of the tonnage of these commodities originating from points on its line, showing the present revenue, the revenue under the scale proposed by the carriers, and the revenues if the Georgia Public Service Commission's scale were adopted. It is covered by my Exhibit 72 (Rec., 399).

Defendants' Exhibit 72 was received.

Mr. Doss: This statement shows the number of cars of sand, gravel and crushed stone, the total weight thereof, moving from points on the Atlantic Coast Line Railroad except points on the Atlantic Coast Line in Florida during the months of March, June and September, 1924 and 1925. The exhibit shows the distances, and separates the hauls as between single line and joint line; it shows the present rates and revenue, and also the rates and revenue that would be received on the basis of the carriers' proposed scales, and on the basis of the scales prescribed by the Georgia Public

Service Commission. This exhibit embraces 9,060 cars. I direct particular attention to the recapitulation shown [fol. 135] on page 17 of the exhibit. Now, some of these cars moved into or between points usually considered within the Pocahontas region, and for the purpose of getting the proper idea as to the level of these rates in the south, I have deducted the movement into the Pocahontas region, also have deducted that movement which occurred intrastate in Georgia, and it will be seen that out of traffic that paid $358,027.08, if the carriers' proposed scale instead of the present rates had been applied, our revenue would have been increased only $3,625.84, or a percentage of 1.01 increase. Now, had the Georgia Commission's scale been applied to this traffic, the reduction would have been $54,602.50, or 15.3 per cent (Rec., 400).

This exhibit does not cover all of the movements of these commodities in which the Atlantic Coast Line actually participates. It covers only the cars which originated on the Atlantic Coast Line. In my judgment, the showing would have been equally as disastrous to us had it included traffic originating on points on other lines. To a very great extent our joint haul rates, and by that I mean the rates which apply on cars which originate on other lines, are, except possibly in North Carolina, where we have a joint line scale on a basis which is higher than our proposed scale, even intrastate in South Carolina, and in Virginia and Alabama, the joint rates are on combination, and had that traffic, had it been possible to include that traffic, I feel certain that even the carriers' proposed scale would have shown a reduction in our present revenues, certainly it would have shown a reduction by using the Georgia Public Service Commission's scale. And the importance of this matter to the Atlantic Coast Line can readily be seen when it is remembered, as I have previously testified, that our revenues on these commodities in a year amount to $5,000,000.00, that a 15 per cent reduction is a right considerable loss (Rec., 401).

The exhibit shows the intrastate movement in Georgia, but for the purposes of the recapitulation, that tonnage has been deducted from the total tonnage (Rec., 401).

[fol. 136] The difference in total revenues that I gave reflects as to the joint line traffic the amount of all the car-

riers participating, not simply the Atlantic Coast Line's proportion (Rec., 402).

But the joint line traffic shown in this exhibit is only that originating on the Atlantic Coast Line and going to points on the lines of each of our connections. It does not include joint line traffic moving from points on other lines to points on the Coast Line (Rec., 402).

The C. & W. C. Railway was not treated as part of the Coast Line for the purpose of this exhibit (Rec., 402).

My Exhibits 73 to 76 are intended to show how the rates which the carriers are proposing in this case, as well as the rates as they would be under the Georgia Public Service Commission's scale, compare with prevailing rates on these same commodities in eastern trunk line territory. We inquired of the eastern roads as to their movements and consuming points, and these exhibits were prepared from the information which they furnished in response to that inquiry (Rec., 402).

Exhibit 73 shows the actual movement during the month of August, 1925 (Rec., 403).

Defendants' Exhibits 73, 74, 75 and 76 were received.

My Exhibits Nos. 77, 78 and 79 compare the rates here in issue with the rates in central freight association territory. My Exhibit No. 78 shows the rates in effect intrastate in Ohio, taken from the report of the Commission in Docket No. 14252 (Rec. 403).

Mr. Burchmore: I offer an objection to Exhibit 77, for the reason it purports to show present rates on sand, other than moulding, blast or glass sand, between points in central freight association territory, and the majority of the origin points shown are not producing points of the character of sand which is being considered in this proceeding, common building sand and gravel. They are producing points of moulding, glass and silica sand (Rec., 404).

[fol. 137] Mr. Gwathmey: Does your objection go to the correctness of this exhibit?

Mr. Burchmore: It certainly should be corrected because in that territory the rates on moulding, blasting and glass sand are on a higher basis than the common sand rates (Rec., 404).

Mr. Gwathmey: If that is a fact, it should be put in evidence in the usual way.

Mr. Doss: The rates shown in this exhibit do not apply on moulding, blast or glass sand. These origins and destinations were taken from a statement that was prepared during Federal control and show actual movements during the period July 1, 1918, to February 29, 1920. I do not know whether any of that movement was moulding sand or not. But, in any event, the rates shown here are not the rates on moulding sand, unless the rates on moulding sand happen to be the rates on common sand (Rec., 404).

Mr. Burchmore: In reference to the note on Exhibit No. 77, to the effect that this statement prepared during Federal control includes certain movements, I believe that the statement from which it is taken should be made available for purposes of cross-examination.

Mr. Doss: I can furnish the statement within a day or two.

Exam. Waters: The exhibit will be accepted and you will furnish the separate statement (Rec., 405).

Mr. Brooker: May I have the record show that this exhibit does not include shipments of sand from points in the Pittsburgh district, Newcastle, Jamestown, and Segerton, Pennsylvania; Akron, Massillon, East Liverpool, Fort Jefferson, Mechanicsburg, Gravel Pit, Marion, Orzack and Dayton, Ohio; Logansport, Toledo, Curran, Attica and Lafayette, Indiana; Lincoln and Pekin, Illinois, which are the largest producing points (Rec., 406).

Mr. Gwathmey: I object to that. I have no objection to his calling—

Exam. Waters: That fact which you have just brought [fol. 138] out in the proper cross examination to weaken the exhibit, what you are stating now you can state when you get on the stand (Rec., 406).

Mr. Brooker: My contention is that this does not cover building sand.

Exam. Waters: That is a matter for you to show by affirmative evidence later on if you can (Rec., 406).

Mr. Price: Before you leave Exhibit 78, the heading refers to sand and gravel, but you only show the sand rates.

Mr. Doss: I will be glad to correct that. What is intended to be shown is the scale prescribed by the Georgia Com-

mission on sand and clay gravel and not on washed gravel (Rec., 407).

I did not undertake to analyze the application of the rates in Ohio and central territory that are shown on page 71 of volume 85 of the Interstate Commerce Commission reports. I do not know what those rates apply on (Rec., 407).

Mr. Doss made a note of the alleged error to which Mr. Price called attention, of gravel rates purporting to be shown in Exhibit 78 (Rec., 408).

Exhibits Nos. 77, 78 and 79 were thereupon received (Rec., 409).

My Exhibit No. 80 compares the rates here in issue with the mileage scales applicable in the southwest (Rec., 409).

Defendants' Exhibit No. 80 was thereupon received.

The joint and single line scales shown under Column C, page 2 of the exhibit, apply generally throughout the southwest; they are the scales prescribed by the Interstate Commerce Commission in the Memphis-Southwestern Investigation, I. C. C. No. 9702, and they have also been shown in my Exhibit No. 126. In offering these exhibits, and dealing with the southwestern rates, it is not my purpose to suggest that the southwestern scales on these or other commodities are a proper measure for rates in the southeast. I have covered all the rates in this territory east of the Rocky Mountains, and just put the southwest in rather [fol. 139] than to have to explain why I did not put them in (Rec., 409).

I am simply undertaking to show that our proposed rates on sand and gravel are actually lower than the level of rates in the southwest fixed in the Memphis-Southwestern case. There is, of course, a movement of sand and gravel in the southwest (Rec., 410).

Mr. Gwathmey: We ask leave to withdraw the statement marked Exhibit 81, consisting merely of excerpts from the Commission's report in the C. & W. C. Railway Gravel Case, anticipating that the other side would object.

Mr. Burchmore: I have no objection to that.

Exam. Waters: It is well to have it in, as a matter of convenience (Rec., 410).

Mr. Gwathmey: If there is no objection, we will then let it stand as Exhibit No. 81.

Exhibit 81 was thereupon received (Rec., 410).

The remainder of my exhibits to and including No. 126 simply compare the rates proposed by the carriers with various rates in various parts of the country that have been prescribed and approved by the Interstate Commerce Commission. My Exhibits Nos. 83 to 88, inclusive, involve rates within southern territory. I particularly call attention to Exhibit No. 83, covering a very recent decision involving rates on crushed stone from Columbia, South Carolina, to stations on the Washington & Vandemere Railroad in North Carolina (Rec., 411).

Defendants' Exhibits Nos. 82 to 126 were received.

Mr. Gwathmey: With the filing of these exhibits, the testimony of Mr. Doss is concluded, excepting as to certain matters relating to the Florida situation for which he will be recalled later. I merely make a formal tender of the exhibits that have been offered, and ask that they be received subject to such objections as may have been sustained during the course of the hearing.

Cross-examination:

[fol. 140] I have not calculated the percentage increase which our proposal would make on traffic moving in Georgia, but it is easily calculated as the figures are shown on Exhibit 72 (Rec., 412).

Mr. Watkins: I have calculated them, omitting Jacksonville from it, and that is practically the same percentage, that is, 27.5 per cent you are proposing to make on this Georgia traffic (Rec., 412).

Mr. Doss: This gives me an opportunity to explain that the revenues shown on this Georgia intrastate traffic were not in all cases the rates that applied at the time the shipments moved. We re-rated the tonnage to get the present revenue by using the present rates and not the rates that were in effect prior to April 1, 1925 (Rec., 413).

In the state of Georgia, the Atlantic Coast Line originates some sand at a point called Williams and at a point

called Saffold, Georgia. They are right important shipping points, but not large ones as compared with the Montgomery district or the Petersburg district. As to this line, the tonnage of these products which we originate in Georgia is comparatively small in relation to our tonnage originating elsewhere (Rec., 413).

Prior to April 1, 1925, we applied the then existing mileage scale applicable in Georgia on our intrastate tonnage in Georgia and there is a comparison of that scale shown in my Exhibit 35. As to whether or not the Georgia Commission decision made an increase or reduction, would depend on the distance it had moved and whether or not for that distance there was an increase or a reduction. As to the intrastate Georgia tonnage originated by the Atlantic Coast Line, the previous existing mileage scale was assessed (Rec., 414).

Our tonnage of sand, gravel and stone in the Carolinas and Virginia is probably greater than the tonnage orig- [fol. 141] inated at other stations on our line, although there is a very considerable amount of that traffic that originates on our line in Florida. I haven't compared the two, but they both are considerable, and I wouldn't like to hazard a guess as to which one was the largest (Rec., 414).

The movements in the Virginia and Carolina areas have been occurring mainly under mileage scales and the exhibits will show that very largely these rates which were assessed are on our proposed scale. We have made effective on intrastate traffic in the Carolina-Virginia area the scale which we are here proposing (Rec., 413).

The scale we are here proposing is very nearly the same as the single line scale in North Carolina. Our proposed scale, where it differs, is usually a little higher than the North Carolina intrastate scale (Rec., 415).

There is very little difference between the scales that are applicable in the Carolinas and Virginia, and those now applicable in Alabama, and those which prior to April 1, 1925, were applicable in Georgia. There was not so very much difference between them and, of course, since the Georgia Commission's scale has been reduced April 1, 1925, it is the lowest one anywhere (Rec., 416).

The scale rate level in the Carolina area is higher than it is in Georgia today and it is just about the same as the intrastate level in Alabama (Rec., 416).

In the Carolina area, the mileage scales have been more or less closely adhered to in the actual charges (Rec., 416).

The movement of these commodities to points on the Coast Line in the southeast, and I mean the southeast as against the Carolinas, has been and is now under rates which are on our proposed scale; they are not published as mileage scales, but the specific rates that are published are on our proposed scale (Rec., 417).

[fol. 142] The great preponderance of the movements of these commodities, other than in Carolina territory, is covered by specific commodity rates that bear no relation to, and are very much less than the current mileage scales, except perhaps to our line, and except, of course, as to rates which are in effect from sand and gravel producing points to Atlanta, Birmingham and the intermediate points. I think they are the principal markets in that territory (Rec., 417).

The situation on the Atlantic Coast Line in South Georgia is no different from that on other South Georgia lines, as illustrated in my exhibits; the rates on sand and gravel from the Montgomery district, and on slag from the Birmingham district, and on sand and gravel from the C. & W. C. pits to practically all of the South Georgia territory are on the basis of the carriers' proposed scale; our situation in that respect, and by our I mean the Atlantic Coast Line, is no different from the Seaboard and the other lines in that section. The special commodity rates, and by that I mean those that are below the mileage scales, are used in North Carolina, Atlanta and Birmingham, but not in our section (Rec., 418).

I have not the data from which a conclusion may be drawn as to whether it would increase the total compensation of the carriers for the movement of this traffic within Georgia if the Georgia Commission's scale were substituted for the specific rates formerly in effect in Georgia (Rec., 418).

The effect of this proposed scale of the carriers on the total intrastate tonnage in Georgia was not given any particular consideration by the carriers at the time it was devised; we did consider the effect that the scale would have in a general way on our revenues in the territory as a whole (Rec., 418).

Until the revision within Georgia, which is involved in the present complaint of the carriers, the mileage scales [fol. 143] previously effective in Georgia were not literally adhered to in all cases; they were generally to points on the Atlantic Coast Line. The other carriers did not always adhere to the scale (Rec., 419).

The comparison of the scale prescribed by the Georgia Commission and such scale as previously existed in Georgia, does not demonstrate the actual effect of the new scale of the Georgia Commission as applied to the movement of tonnage. It would not do that, where you have a rate lower than the old scale, and it is brought up or down to the new scale (Rec., 419).

"Q. Now, while it may be that as applied to one carrier, namely the Coast Line, for reasons not now important to be inquired into, you did charge the previously existing Georgia Commission's scale on such small intrastate tonnage as is originated in Georgia, may it not have been the consequence of the Georgia Commission's revision that as applied to the total sum of revenue obtained by the carriers for the intrastate movement of this traffic in that state, such compensation of the carriers was increased and not reduced?"

"A. I don't know" (Rec., 420).

The complaint to the Commission, so far as we were concerned, was filed for the Atlantic Coast Line Railroad, and we tested the effect of the Georgia Commission's scale on our revenue. I have no information as to the effect of the Georgia Commission's new scale on the total revenue in Georgia, but the Coast Line was not only affected as to that traffic which it originates, it was more particularly affected by that traffic which it delivers, and which is now originating in Georgia under these low rates, whereas, before we handled it through on a combination basis from the Georgia origins, or we handled it from the shipping points on our own line located in other states (Rec., 421).

I have indicated that it was our purpose, where we are not now applying our proposed scale, to apply it or make an effort to have it apply throughout the states in which we operate, with the exception of Florida. We do not think

[fol. 144] it would be proper to apply anything lower than this scale throughout the south (Rec., 431).

There is a scale in North Carolina applicable on clay gravel, for municipal, county or state use, and at the time it was established, it was lower than the so-called commercial scale. But with the readjustment of the commercial scale, it is about the same as that old municipal clay gravel scale (Rec., 422).

The municipal rates that are applicable intrastate in North Carolina were published under an order of the North Carolina Commission. The only other state in which we have municipal rates is Florida, and I have explained the origin of those rates. At the time they were established, they were in the nature of arbitrary rates, in that representatives of the carriers arranged for their establishment with the representatives of the Florida Commission. We have since tried to get them out, without success (Rec., 422).

As to whether the scale which the carriers here propose is intended to be substituted for the scales of rates now limited to municipal use, the only municipal rates on the Atlantic Coast Line are those in North Carolina and those in Florida. Those in North Carolina are not of any importance. They apply only for single line hauls and there is no clay gravel on the Atlantic Coast Line in North Carolina. If the traffic originates in North Carolina on some other railroad, the commercial joint line scale of the North Carolina Commission would yield a lower rate than the totals of the separate factors under the municipal scale (Rec., 424).

Furthermore, the commercial scale in North Carolina is about the same as the old intrastate municipal scale which is therefore practically obsolete. Now, as to Florida, we would be glad enough to substitute the proposed scale for the municipal rates if they would let us, and it would be our purpose to try to get them to let us do it (Rec., 424).

[fol. 145] I do not recall that any particular consideration was given to the municipal rates in the conferences of the carriers which I attended, or that their cancellation was considered as one of the elements. I do not recall that it was discussed (Rec., 425).

Mr. Cotterill inquired whether succeeding witnesses for other lines would likewise record the consequences of traffic

tests. Neither the witness nor Mr. Gwathmey could answer the inquiry (Rec., 425).

By Mr. Cotterill:

Q. Mr. Doss, was the filing of the traffic test by you intended in any manner by you to be understood as suggesting that it is illustrative of the revenue consequences of your proposal as applied to the Southern territory as a whole? (Rec., 426.)

A. No sir.

Q. Was it intended by you to be suggestive of the revenue consequences as applied to other important lines of railroad?

A. Well, I have more particularly in mind in the preparation of this exhibit to show that traffic was moving freely within this territory on a basis of rates which is substantially the same as that which is being proposed by us. I think largely that exhibit as showing the result of the application of the scales to the Coast Line movement will be true as to the traffic of other lines; that is, of course, more particularly true as to the Carolinas than it is with Georgia and Alabama, particularly the northern portions of those latter states (Rec., 427).

I make no claim that the test shown by my Exhibit No. 72 would yield the same result if all the movements in the south were tested in the same way (Rec., 427).

By Mr. Cotterill:

Q. Speaking now not of the measure of either your scale or the Georgia Commission's scale in the sense of its revenue producing qualities, comparison of your scale with [fol. 146] that of the Georgia Commission indicates that according to the studies of the carriers, the progression of the Georgia Commission's scale is not in your judgment proper, is that a fair statement? (Rec., 427.)

A. I don't think it progresses rapidly enough or starts from a sufficiently high plane (Rec., 427).

Q. Well, in a comparison of the two, the Georgia Commission's scale and yours, it is observed that while as a whole your scale is higher, yet in addition to that the progression would be different, that is true, it is not? (Rec., 427.)

A. There is not the same progression, not the same rate of progression (Rec., 427).

Q. Your scale would increase the shorter distance rates of the Georgia Commission more than it would the longer distance rates, would it not?

A. Probably in percentage, but not necessarily in cents per ton (Rec., 427).

I have filed a number of exhibits containing excerpts from previous decisions of the Commission in cases involving a number of these commodities in southern territory, but I do not know of any previous proceeding involving the rate structure as a whole in southern territory (Rec., 428).

Q. Among the elements which you enumerated as entering into your scale, you stated that thought was given to certain studies of the Southern Freight Association or its predecessor in which it drew together the various scales prevailing in the south and their averages, did you not? (Rec., 429.)

A. Yes sir.

Q. Does the scale which the carriers are here proposing [fol. 147] correspond closely to such average?

A. Well, there is a comparison made of the averages with the scale here proposed in one of my exhibits (Rec., 429).

Q. I was coming to the point as to the difference between you on the matter of rectifying awkward rate jumps and the evidence as a rate level your scale would approximate the averages as thus produced by that committee? (Rec., 429.)

A. No sir, the scale is not based on taking the averages that merely removed the discrepancies or irregular jumps (Rec., 429).

Q. Well, if not based upon it, does it approximate it when those rectifications be made? (Rec., 429.)

A. Well, the exhibits I filed show.

Q. I will not ask you then to refer to that.

A. Let me explain that we are suggesting here on scale to apply on all of these commodities (Rec., 429).

Q. Yes.

A. The study made by the Southern Freight Committee was separate as to each, sand, gravel and stone and chert and the rest of them; my exhibit only undertakes to show

the averages on the more important ones, and obviously where they differ, our scales could not have been approximately the same as those scales, because we are suggesting one scale, whereas the averages were different on each commodity. We did give weight to that in arriving at our scale, but we did not follow those averages as to either commodity (Rec., 430).

Mr. Burchmore: I offer an objection, which you may wish to consider during the recess, to Exhibits 85 to 125, inclusive, on the ground that they do not comply with paragraph C of Rule 13 of the Rules of Practice, in that they purport to be statements of rates in other territories, and there is no tariff reference to support them (Rec., 430).

[fol. 148] After the noon recess, Mr. Burchmore renewed the objection.

Exam. Waters: In looking over these exhibits rather hurriedly, they appear to be citations of rates found reasonable or prescribed by the Commission in numerous cases which are cited. If there are any existing rates shown and no tariff references given, of course that ought to be done.

Mr. Burchmore: Exhibit No. 90 illustrates my objection. There is a note stating "Rates prescribed by the Interstate Commerce Commission are as of November 13, 1919." They have been increased and respective changes under Ex Parte 74 and Docket No. 13293 (Rec., 431).

I am sure that you will find that the rate shown of $1.51 is not the rate dealt with in the Commission's decision. It is a figure that the witness has converted by a process that he stated, and the present rate, according to the tariff, would probably be a different figure. This $1.51 is the present rate according to the note at the bottom of the exhibit (Rec., 432).

Mr. Gwathmey: If there is any uncertainty, I will say that the purpose of the exhibits was largely as a matter of convenience to the parties to show the level of the rates which the Commission has found reasonable on the commodity in these various cases. For the purpose of the exhibits, those rates were plussed and reduced according to the general percentage changes. They are not offered for the purpose of showing what the present rates may be between any

particular points. They are intended simply to show what the Commission in the past has held to be reasonable in comparison with the charge that we are now proposing (Rec., 432).

Mr. Brooker: The rates in eastern trunk line territory and in central freight association territory were not reduced 10 per cent under this docket which they have referred to. They had previously to that received a reduction of at least 18 per cent in 1921. In other words, the rates in that territory were put on a basis of 115 per cent of the rates in [fol. 149] effect pior to August 26, 1920. So, therefore, the 10 per cent reduction would not apply to any of those rates, and in addition to that, there have been numerous other changes in the rates since that time (Rec., 433).

Exam. Waters: As I understand it, Mr. Gwathmey does not intend to say that these exhibits show the existing rates between the points today and it is just a matter of computation by applying the general increases and reductions (Rec., 433).

Mr. Burchmore: I point out that the rates that are shown are not the rates that the Commission considered at all.

Exam. Waters: Of course, we can't go into that. It seems to me that would be a matter for argument (Rec., 434).

Mr. Burchmore: Exhibit No. 90 does not show the rate that was before the Commission, does it?

Mr. Doss: It does not, it shows exactly what was done. The exhibit states that the rate is not the figure shown in the record, but that it reflects the general rate changes. I do not know whether $1.51 is the existing rate today between Nichols and Athens (Rec., 435).

Exam. Waters: In other words, to know what was considered by the Commission in that case, you will have to get the report. We will accept the exhibits with those weaknesses in them (Rec., 435).

Exhibit 71 shows that the rate is $1.40 from Cooks, Alabama, to Bainbridge, Georgia, out of which the Atlantic Coast Line receives $1.15, leaving 25 cents for its connections. That was and is the rate and the division. If the Georgia Commission's scale takes effect, the rate becomes $1.20, and this exhibit shows that if such rate was divided on the basis fixed by the Georgia Public Service Commis-

sion, 90 cents would be the division to the Atlantic Coast Line and 30 cents to its connections (Rec., 436).

[fol. 150] By Mr. Burchmore:

Q. Is there any reason why it should be so divided that the divisions of your connections will be increased although the rate is reduced? (Rec., 436).

A. Well, under the Georgia Commission's basis for dividing the rates, that would be the result (Rec., 436).

Q. Is there any other reason than that that you have just given?

A. Well, I don't know that I understand what you mean. This exhibit shows the present rates and divisions, and what the rate and divisions would be on the basis of the Georgia Commission's order. Now, presumably the initial line would require all that the Georgia Commission allowed it, and that would leave us only 90 cents, paying 5.1 mills per ton per mile (Rec., 436).

On Exhibit No. 70, from Norris, Georgia, to Jesup, Georgia, when the rate was reduced from $1.67 to $1.30, the exhibit shows the division of the Atlantic Coast Line was reduced but the division of its connection was increased, namely, from 67 to 75 cents. This was because prior to the time the Georgia Commission fixed these rates, we could fix any rate and divisions that were satisfactory to us and to our connections, so long as we did not go above what was then the maximum scale of the Georgia Commission, but when the Georgia Commission took the matter in hand and fixed joint rates, it fixed joint divisions: that is what we are complaining about, that those joint divisions which it fixed do not allow us what we consider to be proper proportions (Rec., 437).

By Mr. Burchmore:

Q. Will you look at the exhibit while I call your attention to a few illustrations: To Jesup, Georgia, the rate was $1.67, it is now $1.30; to Camilla the rate was $1.67 and is now $1.30; the divisions to Jesup were $1.00 to the Atlantic Coast Line and 67 cents to its connections and are now 55 cents to the Coast Line and 75 cents to its connections; yet to Camilla it was 50 cents to the Coast Line and is now 30

cents, it was $1.17 to its connections, and is now $1.00; that [fol. 151] looks like a rather mixed up mess over divisions (Rec., 438).

A. I agree with you thoroughly, I think it is absolutely absurd, but we are not responsible for it.

Q. All right, now going back to the exhibit.

A. That is what we are complaining about now (Rec., 438).

By Mr. Burchmore:

Q. Turn back to Exhibit No. 54, showing the lumber subcommittee scale as compared with the stone scale, and state whether or not it is true that out of these through lumber rates for joint hauls the originating line for very short hauls is allowed divisions of 6, 8 and 10 cents per 100 pounds? (Rec., 438.)

A. Not to my knowledge, we can't allow them and don't allow them.

Q. Do you know whether the basis of divisions is much more favorable to the origin lines out of these lumber rates than it is out of any of your stone rates and sand rates?

A. Not under these rates, I don't so understand, the rates are pretty tolerably low, and I wouldn't consider that any of the lines get proportions that are excessive (Rec., 438).

Q. I didn't ask you that, I asked you about the fact.

A. You probably misunderstand that this scale that is shown in here under the heading "Georgia Scale" is a scale that is applied between points on trunk line railroads, it is not devised to apply from short line points (Rec., 438).

Our lumber scale shown on Exhibit 54 is not devised to apply from sawmills located on short line railroads. It is a scale that is to be applied between points of origin and destination, both of which are on trunk lines (Rec., 439).

In connection with Exhibit 55, I did not give any particular attention to decisions of the Commission dealing with joint line and single line rates on such commodities as cement and oil and lumber. I merely took the reports of [fol. 152] the Commission and undertook to find where the Commission had fixed or approved mileage scales on various commodities and had shown a differential for joint

over single lines. I do not recall seeing any reports where they did not fix joint line differentials. I did not participate in the cement case (Rec., 440).

The proposed adjustment of the rates on brick in the south which was considered by the Interstate Commerce Commission in I. & S. Docket No. 1885, was made, that is, the rates were published, after the carriers had submitted their proposed scale to the Georgia and Alabama Commissions. We had thought it proper to observe joint line rates on brick made in substantially the same manner as our proposed rates on sand, gravel and stone. But a number of difficulties arose and we had numerous conferences with the shippers in an effort to compose the situation. Early in the proceedings, it seemed appropriate and necessary to observe rather large groupings of origins, particularly to destinations 150 miles and more away. In working out those rates and trying to make the rates conform to the amended fourth section, and in an effort to keep open all competing routes, it was almost impossible to work out rates that would preserve those groupings and keep all routes open with higher scales for joint hauls than for single line hauls. We were under the strongest kind of pressure from the shippers to suggest a lower scale, both single and joint line, and somewhat in the nature of a concession on the part of the carriers, we merged the two scales at about 80 miles. We did not think that the rates that we accept on brick for joint line hauls with that small differential are the proper level of those rates (Rec., 442).

The Interstate Commerce Commission adopted this basis of 20 cents per ton for a joint line differential which disappeared at 80 miles, but prescribed in its report in I. & S. No. 1885, somewhat lower rates for short hauls than the carriers had published, and somewhat higher rates for the longer hauls (Rec., 443).

[fol. 153] In Docket 9702, the Interstate Commerce Commission fixed joint line differentials on sand and gravel which ran from 10 cents to 30 cents a ton. It was a peculiar sort of scale in that the joint line differential was 10 cents for 10 miles and got up as high as 30 cents for some of the longer distances (Rec., 443).

Commercial and competitive conditions entered into the compromise of the brick situation, as well as the fourth

section, but if it had been possible to observe the fourth section, I don't think that the carriers would have been willing to suggest any removal of the original differential, joint line over single line hauls (Rec., 443).

By Mr. Price:

Q. Now, what is there, Mr. Doss, about the movement of sand and gravel, etc., that will enable you to overcome these fourth section difficulties that you could not overcome with your brick situation? (Rec., 443.)

A. Well, we haven't the same situation as we have on brick, first, because any scale that we have ever seen that moves sand and gravel is so low that you cannot apply the single line scale for a joint line service, the level of the rate is so much lower than on brick that you just simply start off with what is practically a minimum rate for a single line haul, there is no margin in there in which to permit of circuitous lines meeting short line rates. There are a number of cases where we can't meet our competitors' rates on sand and gravel, whereas, there are very few on a commodity like brick. I wanted to just sort of illustrate some of the things we had on brick, which I don't think would arise on the sand and gravel. One particular case on the brick was where from the Birmingham district, the producing points in quite a large area had been thrown in one group, and there was a place on the Louisville & Nashville Railroad, I believe Sibleyville, that was 25 or 30 miles out of Birmingham, but in that grouping it [fol. 154] was given the Birmingham rate for distances 150 miles or more away from Birmingham. Now, take Athens, Georgia, the rate from Sibleyville was made on the single line scale of the Seaboard Air Line from Birmingham to Athens, which is the short line. Now, take from Chattanooga, the single line distance of the Southern Railway is considerably in excess of the short two-line haul of the N. C. & St. L. Railway and the Seaboard Air Line, yet under this basis we had worked out, you would have had a lower rate from Sibleyville via the single line scale of the Seaboard from Birmingham, than you would have had with the joint haul from Chattanooga to Athens. And there were just literally thousands of those situations which caused us to remove the differentials on joint hauls.

Now, in the case of sand and gravel, of course, you would have that competition probably, but you haven't that margin in which you can afford to create a parity in the situations by meeting the lowest rate from all the producing points (Rec., 445).

At the present time, the pits in the Montgomery district to points on the Coast Line, for example, 150 miles or more away from Montgomery, are on a group basis, using the single line scale from Montgomery proper, we are proposing to restrict that so that the grouping will only apply to pits within 18 miles of Montgomery. That is rather an expensive sort of a proposition for some of the railroads that try to carry out that basis, we don't feel for example that we ought to have to take a pit on somebody else's railroad, and put that pit in competition with a pit on our own line at our expense. That is the way we look at it (Rec., 445).

But we are doing that. The greater part of the business that we handle out of the Montgomery district originates within the Montgomery switching limits. There is very little, if any, movement from Chehaw, now. There is a movement from both Cooks and pits on the Louisville & Nashville Railroad but that movement is not as great as the movement from the points located in the Montgomery [fol. 155] switching limits (Rec., 446).

I do not have in mind particularly Cooks, but other pits on the Western Railway of Alabama. I know there has been a movement from Cooks in days gone by (Rec., 447).

There is a movement from pits on the Western Railway of Alabama in the Montgomery district in connection with the Atlantic Coast Line on our single line rates. The pits on the Western Railway of Alabama and the Louisville & Nashville Railroad in the Montgomery district are all grouped. That group covers Chehaw which is 39 miles this side of Montgomery. The rates from Chehaw apply back though Montgomery and over the Atlantic Coast Line into Georgia. If we applied the joint line scale we would certainly have a different situation. But where we observe this grouping, the distance would be 150 miles and under the Georgia Commission's scale there would not be any difference between the single and joint line for the same distance (Rec., 448).

Of course, adding the 7 or 9 or 10 miles to the Montgomery distance would throw it into another and probably higher rated group. But as I have explained, we propose to restrict that area to points within 15 miles of Montgomery, which would exclude Chehaw and would increase a good many of the rates from Chehaw (Rec., 448).

The carriers' proposed scale was constructed in 1921. That scale has been subjected to the 10 per cent reduction. I would not say that has produced a very irregular scale or rate of progression. Taking the rates originally submitted, if the old figure ended in naught, you could get an exact 10 per cent reduction. Where the old figure ended in 5, under the rules of disposition of fractions, which was observed, you would get instead of five-tenths, which would just disappear on that 5 cent figure, for instance, if it was $1.95, you wouldn't take off 19.5 cents, you would [fol. 156] take off only 19 cents, that made the scale where it had progressed at the rate of 5 cents for a mileage block, the new rate would progress only 3, it would be 5 cents, and the next time 4 (Rec., 449).

Q. It is irregular?

A. Yes, that is irregularity.

Q. If you were called upon to construct a scale today, you would not use the rate of progression as is proposed in your scale now, would you?

A. No, and the only reason we have suggested a new scale is due to the fact that in the interim between the time this scale was thought of and July 1, 1922, we had published a number, a great number of specific rates, and all of those rates would have then been off the basis (Rec., 449.)

Of course, that was not only true of sand and gravel, but it was true of all other commodities where we had revised specific rates to reflect the scales submitted to the Georgia and Alabama Commissions. We decided the best thing to do would then be to let the scales stand at least until they were passed upon and fixed as final figures (Rec., 449).

At the time when this scale was constructed, I do not recall that we gave any particular consideration to the financial condition of the carriers. We, of course, did not want to throw any money away just because we were called

upon to submit a mileage scale to the Commission and some of us have been criticised for having suggested the rates that brought that about (Rec., 450).

Q. You certainly did not consider that the rates proposed to the Georgia Commission at that time would lose you any revenue at that time, or you would not have proposed them, would you?

A. Well, I can't say that that was the case, because we knew that we were proposing scales then to the Georgia Commission which if applied over our line interstate and intrastate in other states, would in a good many cases [fol. 157] cost us a whole lot of money; I think there is no question but what this sand and gravel scale has reduced our revenues in other places.

Q. Do you recall whether or not the financial condition of the Atlantic Coast Line Railroad was better in 1921 than it was in 1925, February, 1925? (Rec., 451.)

A. I haven't made any particular study, and all that I know in a general way is that we are handling more business and are better off financially than we were then (Rec., 451).

Q. Your net is better off?

A. Yes sir.

Q. Now, Mr. Doss, the Atlantic Coast Line is the only trunk line that has filed this complaint against the Georgia rates? (Rec., 451.)

A. That is correct.

Q. And there were four or five of the short lines that joined in this complaint?

A. Yes sir (Rec., 451).

Q. Now, do you think it would be practicable, Dr. Doss, for the Georgia Commission in dealing with this general revision which it has had under way since 1921, to select the Atlantic Coast Line and these eight short lines, and give them special treatment, rather than to look at the situation as a whole? (Rec., 451.)

A. Well, I think that the scale which we proposed to the Georgia Commission for application via all the lines in the State of Georgia would of itself have required you to have considered the lines as a whole, but we think that our situation should have been considered along with the

others, as no doubt it was (Rec., 451-452).

Q. And the other lines did not take the same exceptions or to the extent that you did to the rates fixed by the Georgia Commission?

[fol. 158] A. Well, they did not join in this petition (Rec., 452).

I was not present nor was the Atlantic Coast Line represented or invited to attend at the conference referred to in the testimony yesterday by the Rate Expert of the Alabama Commission. I do not know of any other line that was represented. The Atlantic Coast Line has something like 175 miles of railroad in Alabama. So far as I know, there was no movement on the part of the Alabama Commission to put these rates into effect in Alabama; on the contrary, the petition which we have pending in Alabama covering the general revision of all the rates has been indefinitely postponed as to sand, gravel, and stone (Rec., 453).

Mr. Cotterill: I think in justice to the Commission, members of which were compelled to return to Montgomery for a day or so, it ought to be recalled that the purpose of the postponement was specifically declared to be in order to solicit from this Commission a more comprehensive determination so that they might consider its adoption in Alabama (Rec. 453-4).

Commissioner Lewis: That is the record (Rec., 454).

There is no complaint by the carriers against the Alabama Commission pending before the Interstate Commerce Commission in regard to sand and gravel rates (Rec., 454).

Mr. Gwathmey: As counsel I will say my understanding is it would not; in other words, I don't understand that there is any thirteenth section proceeding here which involves intrastate rates in the state of Alabama (Rec., 454).

Some of the scales referred to on my exhibits 48, 49 and 50, are moving a very important tonnage today. I refer to the mileage scale that is applicable interstate between points on the Atlantic Coast Line in Virginia and North and South Carolina. We do publish, in some cases, specific rates, but they are in most instances on the mileage scale which is shown in this exhibit (Rec., 455).

[fol. 159] My Exhibit No. 70 shows the rates from Norris, Georgia, to Tifton. That mileage was constructed by the short line, which is through Macon. That would be true of Valdosta, and Jesup. We wouldn't attempt to handle business from Norris to Jesup through Albany under the Georgia Commission rates if we could get out of it. We did handle traffic that way under our former rates. I have not checked to see that we actually handled any business from Norris to Jesup through Albany. But we did put in a line of rates for the Norris pit lower than the combination basis in effect prior to April 1st, and we did handle some business down there (Rec., 456).

Our distance from Albany to Jesup is 152 miles. That makes 330 miles from Norris to Jesup, as compared with 219 miles by the short-line or an out of line haul of 111 miles (Rec., 456).

I don't think we would permit our soliciting people to solicit business on that character even under our own rates. Of course, it would all depend on what we got out of it. We required a proportion of $1.00 per ton from our connections on the business which we did handle, if we handled anything. It would leave 67 cents for the 178 miles from Norris to Albany under our rates (Rec., 456).

I don't think they would ever have forwarded any business to Jesup via Albany; the Georgia Railroad undoubtedly delivered it to the Southern Railway at Macon (Rec., 456).

The Georgia Commission's order would not require the Atlantic Coast Line to accept business originating at Norris, Georgia, for Jesup, Georgia, on a rate which the Commission has fixed through Macon. But take Blackshear, Georgia, for example, which would be within that same mileage group, we would have to accept it wherever it was tendered to us. Blackshear is 10 miles from Jesup, as I recall, or 320 miles from Norris to Blackshear through [fol. 160] Albany, as against 220 miles through Jesup. We would not be required by the Georgia Commission to accept this business at Albany. I mean that under the Georgia Commission's Freight Rule No. 33, which pertains to routing, the Albany route would not be required to handle it unless it so elected. But, in the absence of any publication to the contrary, I understand the Georgia Railroad today could forward Jesup business through Macon and Albany,

and we would have to accept these proportions on it (Rec., 458).

I do not understand that in the Georgia Commission's order of February 25, 1925, as promulgated, we could fail to apply the rates via any of the routes that handled it voluntarily, without a tariff publication to the contrary (Rec., 458).

I think your Rule No. 33 was more applicable prior to the establishment of these joint line hauls than it is today, as I recall a long line could meet a short line's rates to those long joint haul points by publication, if it didn't publish the rates it couldn't meet the short line's rates, but as we have issued these through rates, they would apply, as I see it, via any or all routes that undertook to handle the business (Rec., 458).

The carriers voluntarily made that publication, not in compliance with any order of the Georgia Commission, but to have restricted it and made it nonapplicable via all these circuitous routes would have been an almost endless undertaking (Rec., 459).

Exam. Waters: I think we have pursued that line about far enough.

Mr. Price: I regretted to go so much in detail on it, but the statement was made this morning that these divisions were forced on the Georgia carriers, and we want to make it clear that they have not been forced on the Georgia carriers (Rec., 459).

[fol. 161] Referring to the first page of Exhibit 72, I believe there is a rate from Albany to Atlanta that was lower than the former Georgia Commission's scale. I do not recall just what that rate was, or whether it applied via the Coast Line. I do know that within the last thirty days our attention was called to the fact that we were soliciting that business under the present rate and we told them to stay off of it. It is my recollection that the rate from Albany to Atlanta is lower than the rate fixed by the Georgia Commission, I forgot the exact figure (Rec., 460).

If the 1924 intrastate rates had been used in these exhibits, there would have been a different showing in both cases (Rec., 460).

I do not know of any movement of crude clay or shale between points on the Atlantic Coast Line Railway in

Georgia. I do not know of any interstate movement into or out of Georgia (Rec., 460).

If there are no actual movements, there would not be any discrimination as to these particular commodities because of their being included in the Georgia scale. If they are omitted from the Georgia Commission's order, it will be satisfactory to me not to consider them in this case (Rec., 461).

Mr. Shepherd: I have been around here four or five days trying to find out whether these rates are under attack or not. I never heard of this case until last Saturday (Rec., 462).

Witness excused, but later recalled for further direct examination.

[fol. 162] ERNEST WILLIAMS testified, as follows:

I am with the Charleston & Western Carolina Railway and have been general freight and passenger agent since July 1, 1902 (Rec., 462).

I have prepared an exhibit to show the tonnage of sand and gravel from stations on the Charleston & Western Carolina Railway to points in the state of Georgia and how that movement has been affected since the Georgia Commission's order went into effect on April 1, 1925. This statement only covers clay gravel. There is practically no movement of sand. It shows the movement from pits in South Carolina on the C. & W. C. Railway between Augusta, Georgia, and Yemassee to points in Georgia, and the total revenue, for the years 1923, 1924 and 1925, in detail (Rec., 463).

Defendants' Exhibit No. 127 was received.

The summary of these sheets shows that in 1923 the tonnage was 110,672, the number of carloads averaged on 40 tons, was 2,767 cars; total revenue of $144,414.14 (Rec., 463).

In 1924, the tonnage was 81,601 tons, 2,040 carloads, total revenue of $120,453.46 (Rec., 463).

In 1925, the tonnage was 8,929, 223 carloads, total revenue of $11,526.34.

I want to state that the rates from C. & W. C. stations on clay gravel to Georgia points were revised under I. & S. Docket 1848, on November 27, 1923. The rates in Georgia intrastate were reduced effective April 1, 1925, and I have shown on the last sheet of that exhibit the movement from April 1 to December 1, 1923, 1924 and 1925; the movement in 1923 for that period being 103,956 tons, 2,599 cars, $137,505.93; for the same period of 1924, 66,755 tons, 1,669 cars, [fol. 163] total revenue $96,029.25; in 1925, 4,422 tons, 111 cars, total revenue $5,432.06. I would call attention to the fact that in the last three months of 1925, there was not a single carload of clay gravel moved off the C. & W. C. Railway to Georgia points (Rec., 464).

The movement shown on the last sheet of Exhibit 127 between April 1 and December 1, 1924, took place under rates which are on the scale that the carriers are now proposing in this case and as approved by the Commission in I. & S. Docket No. 1884 (Rec., 464).

Cross-examination:

The scale rates are applied from pits on our line to points in Georgia; the scale rates where we applied the single line scale to points on connections beyond as shown in that I. & S. Docket, and to all other points where we show a joint line scale, that is, the scale that was proposed to the Georgia Commission in 1921 less 10 per cent (Rec., 464).

Those are the rates which were dealt with by the Commission in the so-called C. & W. C. case. The rates under suspension in that proceeding were not in the nature of group rates, as between different origin points; as to the measure of the rates, they were materially advanced in some cases under the I. & S. Docket (Rec., 465).

Our road has 18 miles of line in Georgia. We have no intrastate movement in Georgia on our line (Rec., 465).

This decrease in our movement to Georgia points was displaced by some movement within Georgia (Rec., 466).

The Georgia Public Service Commission reduced their scale of rates much below the scale of rates approved by the Commission or the rates approved by the Commission in 1848, and that shut the shippers along our line out in Georgia, and the Highway Commission cancelled their

contracts which they had on account of the difference in the rates (Rec., 466).

[fol. 164] My information is that the tonnage we have lost is moving from Georgia points. The Georgia rates increased the tonnage and movement and revenue of the carriers between points in Georgia, at much less rates than applied from South Carolina to Georgia (Rec., 466).

I am showing that the Georgia rates discriminated against the interstate rates. I am not duplicating the testimony in regard to the rates because I thought that was unnecessary, but I am showing that the movement demonstrates that the rates put in by the Georgia Commission which are lower than the interstate rates have cut the interstate movement off entirely (Rec., 467).

It is true, so far as the tonnage goes, that the business lost by our line and pits located on our line went to some pits located in Georgia and that whatever carrier served that pit in Georgia got the new tonnage and the new revenue; but they got it at the lower rate than applied from South Carolina to Georgia (Rec., 467).

By Mr. Burchmore:

Q. I would like to ask whether it is not a fact that the tonnage was destroyed by the Interstate Commerce Commission's order in the C. & W. C. case? (Rec., 467).

A. I will have to let the statements speak for themselves, the rates fixed by the Interstate Commerce Commission or approved by the Interstate Commerce Commission went into effect on November 27, 1923; now, if you will look at the movement in 1924, you will find that that is not materially reduced, certainly nothing in line with the reduction in 1925, while it was slightly reduced, but we expected that because the same amount of money which made as many miles of road at one rate as it would at a little higher rate, and we expected a reduction, which shows here that the movement in 1923 was 110,672 tons, in 1924, it was 81,601 tons, while in 1925 the movement is only 8,929 tons, so the rates fixed by the Commission did not [fol. 165] affect the movement materially (Rec., 468).

Q. But from the stations where the rates were increased as the result of that order, wasn't the tonnage nearly annihilated?

A. No sir, all of the pits were on a group basis, so the same thing applies from all of them (Rec., 468).

I have been with the C. & W. C. Railway for a good many years and I think I am thoroughly familiar with the movement of this material from our stations to points in Georgia. I would not say that prior to 1923, we had a monopoly on this business. I have not had occasion to look the rates up to see whether there were anything but class rates in Georgia. It is true any order issued by the Georgia Commission would be directed against us, but having no movement in Georgia, I did not make a note of the Georgia rates (Rec., 469).

Witness excused.

[fol. 166] L. V. CRANE testified as follows:

I am assistant to the vice president in charge of traffic of the Southern Railway System lines, with headquarters at Washington, D. C. I have been in the traffic department of the Southern Railway System for more than fifteen years past (Rec., 470).

Mr. Crane's Exhibits 128 to 156, inclusive, were offered in evidence and received, subject to any objection to be made thereto (Rec., 470).

I will deal with the rates here involved from Chattanooga, Tennessee, to points on our lines and also, to some extent, with the intrastate adjustment in Georgia (Rec., 470).

The rates on sand and gravel from Chattanooga to points on our lines are predicated primarily on our general interstate mileage scale. There are some few exceptions to this basis to which I will later refer. The present general interstate mileage scale of the Southern Railway is the same as the scale previously referred to as the carriers' present proposed scale (Rec., 471).

The general interstate mileage scale of the Southern Railway System provides the same rates on crushed stone, slag, chert, sand and gravel, whether washed or unwashed. The scale has quite general application on interstate traffic between points on our lines, except where, for competitive reasons, rates on a lower basis are maintained (Rec., 471).

This scale was established effective July 1, 1922. Prior to that date the scales which we operated applied only for single line application. But in the revision of July 1, 1922, we established a scale for joint line application as well as for single line application (Rec., 471).

Prior to July 1, 1922, we maintained a single line scale of rates on crushed stone and slag which applied generally over the lines of the Southern Railway Company. At that time we also had in effect other interstate scales on sand and gravel which were generally on a higher level [fol. 167] than the scale applicable to crushed stone and slag. These interstate scales on sand and gravel as in effect prior to July 1, 1922, were not uniform, and different scales were applicable on different parts of our line (Rec., 472).

My Exhibit 128 is a statement showing the interstate mileage scales of the Southern Railway Company in effect prior to July 1, 1922, and the uniform interstate mileage scale which was made effective on that date.

Defendants' Exhibit 128 was received.

Mr. Crane: When this scale was first established it carried minimum weight marked capacity of car, but it was later revised to provide for minimum weight 90 per cent of marked capacity of car. The first scale shown on this exhibit is the scale of rates on crushed stone and slag which applied prior to July 1, 1922, on interstate traffic generally between points on the Southern Railway Company. The second scale of rates shown on this exhibit applicable on gravel, sand and slag applied generally to interstate traffic between points on the Southern Railway Company east of Atlanta, Georgia. This scale was first made effective on January 1, 1916, as a part of the general revision made under the Commission's decision in Fourth Section Violations in the Southeast, 30 I. C. C. 153. This scale has application between stations on our main line between Atlanta, Ga. and Lynchburg, Va. as well as on interstate traffic generally between points in North Carolina, South Carolina and in Virginia south of the main line of the Norfolk & Western Railway. The same scale prior to the increases under Ex Parte 74 also had application on our main line north of Lynchburg, Va., but under the Commission's decision in Ex Parte 74, the rates

between points north of Lynchburg were increased 40 per cent and the rates between points north of Lynchburg, on the one hand, and south of Lynchburg, on the other, were increased 33 and 1/3 per cent, whereas, the rates between points south of Lynchburg were increased 25 per cent. I have merely shown in these comparisions the scale that was increased 25 per cent under Ex Parte 74 and not the same scale which reflected the increase of 33 and 1/3 per cent or 40 per cent under Ex Parte 74 (Rec., 473).

[fol. 168] This scale of rates on gravel, sand and slag applicable between points on the Southern Railway Company east of Atlanta prior to July 1, 1922, closely approximated, although it was generally somewhat higher than the scale of rates on crushed stone and slag which applied generally over the Southern Railway Company prior to July 1, 1922 (Rec., 473).

The sand and gravel scale shown on the third column of this exhibit applied prior to July 1, 1922, between points on the Southern Railway Company west of Atlanta. This scale was on a higher basis than the scale which applied on the Southern Railway Company east of Atlanta. The scale had application prior to July 1, 1922, from Chattanooga, Tenn., to points on the Southern Railway Company between Chattanooga and Brunswick, Ga., including the Fort Valley and Columbus branches, except to a comparatively few competitive points where specific commodity rates on a lower basis were in effect (Rec., 474).

The fourth scale shown on this exhibit in effect prior to July 1, 1922, applied to interstate traffic between points on the Southern Railway Company east of Paint Rock, N. C. and Atlanta, Ga. on the one hand, and points on the Southern Railway west of Paint Rock and Atlanta, on the other (Rec. 474).

In 1921 we were urged by some of our shippers to make a revision in our interstate scales on this traffic. The matter was carefully considered by our company and also in conference with other carriers, with the result that we proceeded to make effective on July 1, 1922, our present interstate mileage scale of rates on the commodities here involved. This revision brought about a general lowering of the rates under our interstate mileage scales on these commodities (Rec., 474).

The revised scale which had been published to become effective on July 1, 1922, was immediately subjected to the general reduction of 10 per cent as result of the Commission's decision in Docket 13293 (Rec., 475).

[fol. 169] Our general interstate mileage scale now applies from Chattanooga, Tenn. to points on the Southern Railway System lines, including the Alabama Great Southern Railroad, New Orleans & Northeastern Railroad and Georgia, Southern & Florida Railway, except in a comparatively few instances where to certain competitive points rates on a lower basis are maintained. The general interstate mileage scale which we established on July 1, 1922, is the same scale which was later approved by the Commission in Sand & Gravel to the Southeast, 83 I. C. C. 436, involving the rates on sand and gravel from Charleston & Western Carolina stations to destinations in the southeast. This is the scale which we ask the Commission to approve as a reasonable maximum scale in these cases (Rec., 475).

There must, of course, be a mileage scale which may be used as a general measure for rates on these commodities. We ask only for the prescription of a maximum scale of rates, leaving to the carriers the right, whether or not it be availed of, to depart from the scale where, in their judgment, competitive conditions may justify such action and such course may be pursued without creating unlawful discriminations (Rec., 475).

There has been in the past and doubtless will be in the future situations that require particular treatment if the traffic is to move. It is impossible to state here to what extent or in what instances it may be necessary to depart from the maximum mileage scale. This is a question of which must be determined on its merits in the light of circumstances in each particular case. All we ask here is that the Commission find that our present general interstate mileage scale is not in excess of a reasonable maximum scale (Rec., 476).

In revising our scales on July 1, 1922, we adopted a scale for joint line application as well as a scale for single line application (Rec., 476).

[fol. 170] In my Exhibit No. 129 I have shown the differences in the joint line scale over the single line scale under our revised interstate scales as they were published effec-

tive July 1, 1922, without the 10 per cent reduction, and after the said scales had been subjected to the 10 per cent reduction (Rec., 476).

Defendants' Exhibit No. 129 was received.

Mr. Crane: The differences ranged from 30 cents to 10 cents, and they now range from 27 cents to 9 cents as result of the 10 per cent reduction. I might point out there that as the result or before the 10 per cent reduction applied, there was a steady progression in our scale, which was disturbed somewhat as the result of the 10 per cent reduction, but that is true of any scale which is subjected to percentage increases or reductions (Rec., 477).

Attention is directed to the fact that for distances 240 miles and over 220 miles, the differential was 25 cents and is now 23 cents, whereas, for the block of distances 260 miles and over 160 miles the joint line differential was 20 cents and is now 18 cents. The joint line differential for distances 240 miles and over 220 miles should have been the same as for other distances in the same block of distances of 260 miles and over 160 miles (Rec., 477).

In Pennsylvania Sand & Gravel Producers Association Case, 100 I. C. C. 717, which involved rates for distances 200 miles and under, in Duquesne Slag Products Company Case, 92 I. C. C. 554, involving rates for distances 220 miles and under, and in Hopeman Material Company Case, 98 I. C. C. 361, involving rates for distances 375 miles and under, the Commission fixed the differential of 20 cents per ton between joint line and single line for all distances (Rec. 477).

For distances 160 miles and under our joint line differen-
[fol. 171] tial is more than 20 cents per ton, while for distances over 160 miles our joint line differentials are less than 20 cents per ton. In fixing the measure of joint line differentials there should be taken into account not only the question of the additional service involved at the interchange point for the joint haul, but also the fact that the revenue must be apportioned between two or more carriers (Rec., 478).

My Exhibit No. 130 shows the rates from Chattanooga, Tenn. to points on our line in Georgia between Chattanooga and Brunswick, Ga., and my Exhibit No. 131 shows the

rates on sand and gravel from Chattanooga, Tenn. to points in Georgia on the main line of the Southern Railway between Atlanta and the Georgia-South Carolina state line, including the stations between Rome, Ga. and Anniston, Ala., between Rome, Ga. and Attalla, Ala. and stations on the Fort Valley Branch and Columbus Division (Rec., 478).

Defendants' Exhibits Nos. 130 and 131 were received.

Mr. Crane: Both of these exhibits show also what the rates would be to these stations under our interstate mileage scale. The rates from Chattanooga to these stations in Georgia on the Southern Railway are the same as our interstate mileage scale, with the exception of the rates to Dalton, Rome and Atlanta, Ga. (Rec., 478). On August 1, 1925, we revised the rates from Chattanooga to these competitive points so as to be no lower than mileage scales prescribed by the Georgia Commission (Rec., 479).

In April, 1917, the rate of 90 cents was established from Chattanooga to Atlanta and as increased under General Order 28, this rate became $1.10 per net ton. If this rate had remained in effect and later increased 25 per cent under Ex Parte 74, and reduced 10 per cent under 13293; the present rate from Chattanooga to Atlanta would be $1.25, or but 3 cents lower than the rate under our interstate mileage scale (Rec., 479).

However, effective December 22, 1919, during the period [fol. 172] of Federal control the rate of $1.10, then in effect, was reduced to 90 cents, which was the rate then in effect on slag from Birmingham to Atlanta. At that time the rate of 90 cents per ton was also in effect on gravel from Chehaw, Ala. on the Western Railway of Alabama, to Atlanta, Ga. (Rec., 479).

The rate of 90 cents from Chattanooga to Atlanta established December 22, 1919, became $1.02 as increased under Ex Parte 74 and reduced 10 per cent under 13293. Under the revision established by the order of the Georgia Commission the rate on sand and gravel not washed became $1.10 and the rate on gravel washed became $1.20 (Rec., 479).

The rate in effect prior to August 1, 1925, from Chattanooga to Rome, Ga. had its origin in a similar rate maintained in the reverse direction. Sand and gravel are pro-

duced at Rome as well as at Chattanooga. A low rate was maintained from Rome to Chattanooga to meet local competition at the latter point, and since one of our competitors was not willing at that time to raise the rate from Rome to Chattanooga we undertook in 1913 to establish the same rate from Chattanooga to Rome, so that the Chattanooga producers might meet local competition at Rome (Rec., 479-480).

The rate from Chattanooga to Dalton was not originally established by us, and we merely met the rate after it had been already established by the N. C. & St. L. Railway (Rec., 480).

Our records for the months of July, August, September and October, 1925, show there has been no movement from Chattanooga to Rome, Ga. There is a movement, however, of gravel from Chattanooga to Dalton and Atlanta, Ga. (Rec., 480).

To Gainesville, Ga., located on our main line north of Atlanta, the present rate is $1.49 per ton, which is the same [fol. 173] as the rate under our interstate mileage scale rate that is shown in 131. The rates to Atlanta and Dalton, Ga. are less than our interstate mileage scale, but even if the rates to those points were on basis of our interstate mileage scale they would still be lower than the rate to Gainesville, Ga. by 23 cents and 72 cents, respectively (Rec., 480).

During the months of July, August, September and October, 1925, the movement over our line from Chattanooga to Gainesville was greater than the combined movements to Atlanta and Dalton. In other words, our movement on the scale from Chattanooga exceeded the movement to points where we had specific rates lower than the scale (Rec., 482).

The rates from Chattanooga to stations in Georgia on the Georgia, Southern & Florida Railway are invariably made on the basis of our interstate mileage scale. However, the Georgia, Southern & Florida Railway is not a party to the complaint which attacks the rates from Chattanooga to destinations in the states of Georgia, Florida and Mississippi (Rec., 482).

My Exhibit No. 132 shows the rates from Chattanooga, Tennessee, to stations on the Alabama Great Southern Railroad (Rec., 482).

Defendants' Exhibit 132 was received.

Mr. Crane: The Alabama Great Southern Railroad extends from Chattanooga, Tenn. to Meridian, Miss., and there are but few stations on this line which are located in the states of Georgia and Mississippi, most of the stations being located in the state of Alabama. The rate from Chattanooga to Attalla, Ala., is 2 cents less than our interstate mileage scale and with this exception the mileage scale is applicable from Chattanooga to all other stations on the Alabama Great Southern Railroad. There are some movements from Chattanooga to these stations for comparatively short hauls (Rec., 483).

Our present general interstate mileage scale was made applicable over the Alabama Great Southern Railroad effective October 1, 1922. In my Exhibit No. 133 I have shown the former interstate mileage scale of the Alabama [fol. 174] Great Southern Railroad contrasted with our present general interstate mileage scale, and it will be noted that the present scale is substantially less than the former scale which applied from Chattanooga to stations on the Alabama Great Southern Railroad (Rec., 483).

Defendants' Exhibit No. 133 was received.

Mr. Crane: In my Exhibit No. 134 I have shown the rates from Chattanooga to stations on the New Orleans & Northeastern Railroad. Our general interstate mileage scale now applies from Chattanooga to stations on the New Orleans & Northeastern Railroad with the exception of New Orleans, La., to which point there is a specific commodity rate on sand which is higher than our interstate mileage scale (Rec., 483).

Defendants' Exhibit No. 134 was received.

My Exhibit No. 135 shows the present rates on slag from Birmingham and Alabama City, Ala. to points in Georgia on the Southern Railway Company, and also what the rates would be to these stations under the general interstate mileage scale of the Southern Railway (Rec., 484).

Defendants' Exhibit No. 135 was received.

Mr. Crane: The rates on slag from Birmingham and Alabama City to stations on Southern Railway Company

in Georgia are based primarily on our general interstate mileage scale. There are some exceptions to this basis at a comparatively few competitive points. For example, prior to August 1, 1925, the rate on slag from Birmingham and Alabama City to Atlanta was the same as the rate on gravel from Chattanooga to Atlanta, but following the decision of the Georgia Commission the competitive rates from Birmingham and Alabama City to Atlanta were increased so as to be not less than the scale prescribed by the Georgia Commission. The present rate on slag from Birmingham is 10 cents higher and the present rate on slag from Alabama City is the same as the present rate on gravel from Chattanooga to Atlanta (Rec., 485).

[fol. 175] To some extent Birmingham and Alabama City are grouped at the same rates to competitive destinations. For example, to Macon, Ga., the same rate has been applied from Birmingham as from Alabama City, the rate from Alabama City being the same as our interstate mileage scale, the rate from Birmingham being somewhat less than the mileage scale. The average of the distances from Birmingham and Alabama City to Macon is 238 miles, and the present rate of $1.53 reflects the mileage scale for the average distance of 238 miles (Rec., 485).

The rate from Alabama City to Brunswick, Ga., is higher than our interstate mileage scale, but the rates from Birmingham and Alabama City to all of the South Atlantic ports, viz: Jacksonville, Brunswick, Savannah and Charleston are grouped at the same rates. The rates from Anniston, Ala., are also the same as from Birmingham and Alabama City, Ala. to the South Atlantic Ports, the distances from Anniston being less than the distances from either Birmingham or Alabama City (Rec., 485).

The rate from Birmingham to Griffin is also somewhat less than the mileage scale rate from Alabama City to Griffin, being the same as the mileage scale (Rec., 485).

The rates from Birmingham and Alabama City to Columbus, Ga., are also less than the interstate mileage scale. We are not the short line, nor the rate-making line from Birmingham and Alabama City to Columbus, and simply meet at Columbus the rates of our competitors. From Birmingham to Columbus the short line distance is 157 miles over the Central of Georgia Railway, and from

Alabama City to Columbus the short line distance is 188 miles over the Louisville & Nashville Railroad to Sylacauga, Ala., thence Central of Georgia Railway (Rec., 486).

In my Exhibit No. 136 the present rates on slag from Birmingham and Alabama City to points in Georgia and Florida on Georgia, Southern & Florida Railway are shown compared with our interstate mileage scale rates (Rec., 486).

[fol. 176] Defendants' Exhibit No. 136 was received.

Mr. Crane: In general, the rates are predicated on this mileage scale, but there are some few exceptions to this basis, and in one instance the rate is higher than the mileage scale. To Sparks, Ga. and to stations between Sparks and Valdosta, Ga. the rates are slightly less than the mileage scale, being the same as the rates to Valdosta and also the same as the rates from Alabama City to the same stations, the rates from the latter point being made on the mileage scale (Rec., 486).

Mr. Burchmore: I call attention to the fact that there are apparently a number of fourth section departures shown on Exhibit 135.

Mr. Crane: Most of these competitive rates are of very long standing and the effect of the revision which we made on July 1, 1922, was to reduce the rates to points intermediate to these competitive points. The exhibit shows that there are some fourth section departures (Rec., 488).

I was discussing Exhibit No. 136. The rates to Jacksonville shown on this exhibit are somewhat less than the mileage scale, but as previously stated the same rates are applied to all of the South Atlantic ports on slag from Birmingham, Ala., Alabama City, Ala., and Anniston, Ala., and the present rate of $2.03 is approximately an average of the rates that would result if the mileage scale were applied in each instance (Rec., 488).

In my Exhibit No. 137 the rates on slag from Birmingham and Alabama City to destinations on the Alabama Great Southern Railroad are compared with our general interstate mileage scale (Rec., 488).

Defendants' Exhibit No. 137 was received.

Mr. Crane: The present rate from Birmingham to Chattanooga is 7 cents less than our general interstate mileage

scale, while the present rate from Birmingham to Meridian is 5 cents higher than our general interstate mileage scale. The present rate from Alabama City to Chattanooga is 2 [fol. 177] cents less than our interstate mileage scale, while the rate from Alabama City to Meridian is the same as our interstate mileage scale. To points intermediate to Chattanooga and Meridian the rates are in some instances higher than and in other instances lower than our general interstate mileage scale. The so-called mileage scale is applicable from Birmingham to points on the Alabama Great Southern Railroad within 200 miles of Meridian. In one of the exhibits filed by Mr. Aldredge in this case, he showed a rate of 90 cents, I think it was, on slag from Birmingham to Meridian, Miss., that is a rate that is applicable to shipments consigned to the authorities of the city of Meridian (Rec., 489).

The exhibit which was filed by Mr. Aldredge made no qualification as to that rate (Rec., 489).

The rates on slag from Birmingham and Alabama City, Ala. to stations in Mississippi on the New Orleans & Northeastern Railroad are invariably the same as our general interstate mileage scale (Rec., 490).

In my Exhibit No. 138 I have shown the scales of the Southern Railway on sand, gravel, chert, crushed stone, and slag, applicable intrastate between points in the state of Georgia in effect prior to April 1, 1925, and as revised effective April 1, 1925, under order of the Georgia Railroad Commission (Rec., 490).

Defendants' Exhibit No. 138 was received.

Mr. Crane: In the same exhibit is shown the present general interstate mileage scale of the Southern Railway on these commodities (Rec., 490).

The scale of rates on crushed stone and slag in effect prior to April 1, 1925, between points on our line in the state of Georgia was the same as the general interstate scale of the Southern Railway, that was in effect on these commodities prior to July 1, 1922, on which date we established our revised general interstate scale. In other words, [fol. 178] for the period from July 1, 1922, until April 1, 1925, our intrastate scale in Georgia on crushed stone and slag was on a higher level than our general interstate scale

and it was not until April 1, 1925, as a result of the order of the Georgia Commission, that the intrastate scale in Georgia became lower than our general interstate scale (Rec., 491).

The two most important shipping points of crushed stone on our line in Georgia are Stockbridge and Holton, located between Atlanta and Macon, Ga. Crushed stone is also shipped from Ayersville and Toccoa, Ga., on our main line north of Atlanta (Rec., 491).

During the months of July, August, September and October, 1925, the Southern Railway Company originated 8,885 cars of crushed stone, of which but 723 cars originated in the state of Georgia. Practically all of the cars originated in the state of Georgia were destined to points in that state (Rec., 491).

In other words, the movement of crushed stone in Georgia on the Southern Railway is small as compared with the movement over the Southern Railway in other territories. The average loading of these 8,885 cars was 52.7 tons (Rec., 491).

The scale of the Georgia Commission on sand and gravel in effect prior to April 1, 1925, was also on a generally higher level than our general interstate scale (Rec., 491).

The principal producing points of sand on our line in Georgia are Roberts, Gaillard, Rollo, Allen and Zenith on our Fort Valley Branch, and Lumber City on our line between Macon and Brunswick (Rec., 491).

It is true that there were some exceptions to the mileage scale of rates in effect between points in Georgia prior to April 1, 1925, the most important of which were the low rates in effect from points on our Fort Valley Branch to Atlanta, Ga. However, there were regular movements to a [fol. 179] considerable number of destinations under the full mileage scale in effect between points in the state of Georgia, as I shall later show (Rec., 492).

While the revised mileage scale of the Georgia Commission was established April 1, 1925, the specific rates in effect on a lower basis were not cancelled until August 1, 1925 (Rec., 492).

Prior to August 1, 1925, the rate from Gaillard and other points in that vicinity on our Fort Valley branch to Atlanta was 57 cents per ton, for distances ranging from 88 to 98

miles. This rate prior to the increase under General Order 28 was but 30 cents per ton, yielding at that time on 50 tons of sand but $15.00 per car. This low rate of 30 cents per ton was in effect for many years prior to 1918, and reflects a situation that was in existence when in 1895 the Southern Railway acquired the Atlanta & Florida Railroad, which extended from Atlanta to Fort Valley (Rec., 492).

Even before the general increases of 1918 several unsuccessful efforts were made to secure authority from the Georgia Commission to increase these rates. Since authority could not be obtained to increase the low rates in effect from Fort Valley branch to Atlanta, in order to assist our other producers it became about that rates in line therewith were established from Lumber City and other shipping points to Atlanta (Rec., 493).

In my Exhibit No. 139 I have shown the former rates and the present rates on sand from Gaillard, Ga. to destinations in Georgia other than Atlanta, to which there was a movement in July, August, September and October, 1924 and 1925, and also the rates to the same destinations under the general interstate mileage scale of the Southern Railway (Rec., 493).

Defendants' Exhibit No. 139 was received.

Mr. Crane: The first station on this exhibit should be Cornelia, Ga., it is misspelled (Rec., 493).

In the first group of stations located on our main line north of Atlanta there were movements to one or more of [fol. 180] these stations, both in 1924 and 1925. The rates to these stations in effect prior to April 1, 1924, were on a generally higher level than the rates under our interstate mileage scale (Rec., 493).

In the group of destinations on our line between Chattanooga and Atlanta is shown Dalton, Ga., to which point the former rate was $1.50, and the present rate is $1.30 per ton, while the rate under our interstate mileage scale would be $1.49 per ton. In July, August, September and October, of 1924 there was a movement of 139 cars of sand from Gaillard to Dalton, Ga., on basis of rate of $1.50 per ton. The rate from Chattanooga to that place of course is on a very much lower basis than the rate from Gaillard. To points on the Fort Valley branch the former rates were on

a generally higher level than our interstate mileage scale (Rec., 494).

To Rome, Ga., to which there was formerly in effect a specific rate less than the mileage scale, there was a small movement of 5 cars in 1924 and a similar movement in 1925 (Rec., 494).

To Columbus, Ga., there was a movement in 1924, but none in 1925, so that we derived no benefit from the increase of the rate from 79 cents to one dollar. Presumably this sand is now being shipped to Columbus from pits on other lines (Rec., 494).

The rates to points on the Tallulah Falls Railway, except Franklin, N. C., were substantially reduced under the order of the Georgia Commission. The rates formerly in effect to these stations were substantially higher than our interstate mileage scale. It will be noted that to Dillard, Ga. the present rate is $1.40, whereas to Franklin, N. C., the next station, the rate is $1.76, a spread of 26 cents (Rec., 494).

On the second page of the exhibit are shown destinations on the Atlanta division, old line of the Louisville & Nashville Railroad, to which there were shipments of sand from Gaillard, Ga. The rates to these stations were formerly on a higher level than the rates under our interstate mileage [fol. 181] scale and the rates to these stations were substantially reduced under the order of the Georgia Commission. In this comparison I have also shown rates to these stations from Knoxville, Tenn. These stations are reached from Knoxville over the single line of the Louisville & Nashville Railroad, whereas from Gaillard they are reached by joint line over the Southern Railway and the Louisville & Nashville Railroad. The present rates from Knoxville to these stations would be reduced by the application of our interstate mileage scale, and as previously shown, the Georgia scale which applies from Gaillard to these stations is on a relatively lower basis than our interstate mileage scale (Rec., 495).

In my Exhibit No. 140, I have shown the rates in effect prior to August 1, 1925, and the rates which were established on August 1, 1925, and now in effect from Gaillard,

Ga., Montgomery, Ala., and Chattanooga, Tenn., to Atlanta, Ga., compared with the rates under our interstate mileage scale, and the rates prescribed by the Commission in a number of cases there shown (Rec., 495).

Defendants' Exhibit No. 140 was received.

Mr. Crane: There is one error in that exhibit, the present rate on gravel from Montgomery to Atlanta should be $1.30 instead of $1.20. The present rate on sand from Gaillard to Atlanta, which is on basis of the Georgia Commission scale is substantially lower than any of the scales prescribed by the Commission on sand, gravel, crushed stone or slag, shown in the exhibit, including the recent scale prescribed by the Commission for application in the eastern part of central freight association territory in Pennsylvania Sand & Gravel Producers Association Case, 104 I. C. C. 717. The rate that would result under the application of Southern Railway interstate mileage scale is lower than any of the scales prescribed by the Commission, with the exception of the scale prescribed in the case last mentioned (Rec., 496).

The Georgia scale as a maximum scale became effective on April 1, 1925, but we did not cancel specific rates which [fol. 182] were lower than that scale until August 1, 1925.

The statement which I previously made with respect to the rate from Gaillard to Atlanta is also true of the present rates from Montgomery, Ala., to Atlanta, Ga., except that the present rate on gravel is the same as the rate prescribed in the Pennsylvania Producers Case (Rec., 496).

The present rate on sand from Chattanooga to Atlanta is lower than any of the scales prescribed by the Commission, and this is also true of the rate on gravel, except that the rate prescribed in the Pennsylvania Sand & Gravel Producers Association Case is the same as the present rate from Chattanooga to Atlanta. The rate under the Southern Railway interstate mileage scale, if applied from Chattanooga to Atlanta, would be lower than any of the scales prescribed by the Commission, with the exception of the scale under the Pennsylvania Sand & Gravel Producers Association Case (Rec., 497).

During the months of July, August, September and October, 1925, the Southern Railway Company originated 11,512 cars of sand and gravel, of which 2,798 cars origi-

nated in the State of Georgia. They were all sand. The movement from points on our line in Georgia consists entirely of sand, and the scale of rates prescribed by the Georgia Commission on sand is lower than any of the scales prescribed by the Interstate Commerce Commission to which I have previously referred, including the present scale prescribed for application in the eastern part of central freight association territory (Rec., 497).

I do not have the distribution of the 2,798 cars of sand moving in Georgia, but it would not be true that all but a small part moved to Atlanta (Rec., 498).

In my Exhibit No. 141, I have compared the intrastate scales of the Southern Railway in South Carolina, fixed by [fol. 183] the South Carolina Commission, with the general interstate scale of the Southern Railway. In South Carolina the same scale applies on gravel washed or unwashed, and the scale of rates on crushed stone is the same as the scale of rates on gravel (Rec., 499).

Defendants' Exhibit No. 140 was received.

Mr. Crane: The scale of rates on sand in South Carolina is also the same as the scale of rates on gravel and crushed stone for distances 80 miles and under and for distances over 300 miles, but for distances 300 miles and over 80 miles, the South Carolina scale on sand is lower than the scale on gravel and crushed stone. The general interstate mileage scale of the Southern Railway is on the somewhat lower basis than the South Carolina scale on gravel and crushed stone and also on sand for distances 80 miles and under and for distances over 300 miles (Rec., 499).

The principal shipping point of sand on our line in South Carolina is Gilbert, located between Columbia, S. C. and Augusta, Ga. Sand is also shipped to some extent from Spartanburg and a few other points on our line in South Carolina. While the scale of the South Carolina Commission on sand for distances 300 miles and over 80 miles is less than our general interstate mileage scale, as a matter of fact the movement from Gilbert, S. C. to destinations in North Carolina greatly exceeds the movement to destinations in South Carolina and our general interstate mileage scale applies from Gilbert, S. C. to destinations in North Carolina on our line (Rec., 500).

The principal shipping point of gravel on our line in South Carolina is Wateree, located between Columbia and Sumter. The South Carolina Commission scale applicable to gravel is on a somewhat higher level than our general interstate mileage scale. There is also a movement of gravel from Wateree, S. C. to destinations in North Carolina on basis of our general interstate mileage scale (Rec., 500).

[fol. 184] The principal shipping points of crushed stone on our line in South Carolina are Columbia, Park Hill or Trenton, located between Columbia and Augusta, Beverly or Liberty, located between Seneca and Greenville, and Pacolet, located between Spartanburg and Columbia. There are other shipping points of lesser importance. The South Carolina Commission scale on crushed stone is generally higher than our interstate mileage scale (Rec., 500).

There are comparatively few exceptions to the application of the South Carolina scales on these commodities (Rec., 500).

One instance is the rate on gravel from Wateree, S. C. to Charleston, S. C. As a temporary proposition and at the request of the South Carolina Commission we undertook several years ago to establish rate of one dollar on gravel from Wateree, S. C. to Charleston, S. C., for a distance of 110 miles. The rate under the South Carolina Commission scale and our interstate mileage scale for this distance is $1.15. The rate from Wateree to Charleston was established to cover a movement consigned to the city of Charleston, and we were asked to put in this rate as a temporary proposition on account of certain rates in effect from competing points (Rec., 501).

Defendants' Exhibit No. 142 was received.

In Exhibit 142, I show the rates on sand from Gilbert, South Carolina, to points in North Carolina on the Southern Railway, to which there was a movement in July and August, 1925. I submit this statement merely for the purpose of showing that our interstate mileage scale is applicable to regular movements from Gilbert, S. C. to points on our line in North Carolina (Rec., 502).

Mr. Burchmore: I object to the exhibit which only purports to show a comparison of the mileage scale between those points with the mileage scale between those points,

comparing the same thing with the same thing. It is incompetent, irrelevant and immaterial. The rates from South Carolina points to points in North Carolina are not at issue in any of these complaints (Rec., 502).

[fol. 185] Mr. Walker: The Commission is asked to prescribe a scale here and we are showing what the rates are between points in North Carolina and South Carolina, and the rates on which the business moved. It is only offered for comparative purposes (Rec., 502).

Exam. Waters: Go ahead, the objection is noted (Rec., 503).

There is also some movement of sand from Gilbert, S. C. to some of our stations in Georgia on our main line north of Atlanta, and in my Exhibit No. 143, I have compared the former rates and the present rates on sand from Gaillard, Ga. to those stations, as well as what the rates would be under our interstate mileage scale, with the rates from Gilbert, S. C. to those same stations (Rec., 503).

Defendants' Exhibit No. 143 was received.

Mr. Crane: The rates from Gilbert, S. C. are on the basis of our interstate mileage scale. The rates from Gaillard, Ga. to the same stations are on the basis of the Georgia Commission's mileage scale. I want to call attention to the fact that our present interstate mileage scale reflects a lower basis generally than was in effect from Gaillard to those stations prior to April 1, 1925 (Rec., 503).

My Exhibit No. 144 shows the present North Carolina intrastate scales on sand, gravel, chert, slag and crushed stone, compared with the general interstate mileage scale of the Southern Railway (Rec., 504).

Defendants' Exhibit No. 144 was received.

Mr. Crane: There is in effect in North Carolina a scale of rates on unwashed clay gravel applicable to shipments consigned to municipal, county or state authorities, which is on a generally lower basis than our interstate mileage scale. This scale was established by the North Carolina Commission in 1913 on complaint of shippers located at Lellington, N. C. on the Norfolk Southern Railway. So far as I have been able to develop, there is no movement of clay

[fol. 186] gravel from points on our line under this scale (Rec., 504).

The single line scale of the North Carolina Commission on washed gravel, sand, chert, slag and crushed stone closely approximates our general interstate mileage scale, the rates for distances under 150 miles being on a somewhat higher level, and for distances 150 miles and over on a somewhat lower level than our general interstate mileage scale. The differentials between the joint and single line scales are lower under the North Carolina interstate scale than under our general interstate mileage scale (Rec., 504).

Sand is shipped from Ronda, Elkin, Siloam, Donnaha, N. C. on our North Wilkesboro Branch, extending out from Greensboro, N. C. It is also shipped from Catawba, on our line between Salisbury and Hickory, and from Balfour, on our line between Asheville and Spartanburg. Sand and gravel is shipped from Grovestone, on our line between Marion and Asheville. The movement from these points is on basis of the mileage scale shown in my Exhibit No. 144 (Rec., 505).

Crushed stone is shipped from Woodleaf, on our line between Winston-Salem and Barber, from Pelham or Stacey, on our line between Danville, Va. and Greensboro, N. C., from Fletcher and Balfour, on our line between Asheville and Spartanburg, and from Hot Springs, on our line between Asheville, N. C. and Morristown, Tenn., and from Grovestone or Swannanoa, on our line between Asheville and Marion, and the movement is on the basis of the mileage scale shown in my Exhibit No. 144 (Rec., 505).

The movement of sand, gravel and crushed stone over the Southern Railway is greater from points in South Carolina and North Carolina than from points in Georgia and Alabama (Rec., 505).

This completes my testimony with respect to the North Carolina rates (Rec., 505).

[fol. 187] In my Exhibit No. 145 is shown the scale of rates on sand and gravel applicable on our Knoxville Division between Chattanooga and Bristol, Tenn., and also our Tennessee scale of rates on crushed stone (Rec., 506).

Defendants' Exhibit No. 145 was received.

This exhibit also shows the rates under our general interstate scale. The scale of rates on sand and gravel shown

on this exhibit applies from Chattanooga to points in Tennessee on our Knoxville division. Sand and gravel is not only produced at Chattanooga, but also at Lenois City, 88 miles east of Chattanooga, and at Knoxville, 111 miles east of Chattanooga. This scale for the shorter distances is on a higher level and for longer distances on a lower level than our interstate mileage scale. There is a great deal of sand all through the East Tennessee section and this scale was established many years ago to meet local competition to those various points. However, the movements via rail lines are largely confined to short hauls (Rec., 506).

The Tennessee scale on crushed stone is the same as our interstate mileage scale. Crushed stone is shipped in considerable quantities from Mascot and other points on our line in the vicinity of Knoxville, and moves on basis of our interstate mileage scale (Rec., 507).

There are no joint line scales in Tennessee (Rec., 507).

In my Exhibit No. 146 are shown the rates on crushed stone from Mascot, Tenn. to points to which there was a movement in July and August, 1925, compared with the rates under our interstate mileage scale. Almost without exception, the rates are on the basis of our interstate mileage scale, there may be one instance, from Rockport, Tenn., where the rate is higher than the mileage-scale. These are commodity rates, figured on the scale (Rec., 507).

Exhibit 146 was received.

By Mr. Burchmore:

Q. You just get out the scale and get them lined up, you don't look in any other tariff, do you?

[fol. 188] A. Whether they are published on the scale or specifically in the tariffs, they are commodity rates (Rec., 508).

By Exam. Waters:

Q. That is done more for convenience, isn't it?

A. Yes sir.

By Mr. Burchmore:

Q. No, I think your answer was that you just get out the mileage scale and figure out how far it is, and then figure out how much your rate is (Rec., 508).

A. Isn't that a very simple thing to do?

Q. But the Examiner thought you could look in a tariff and see that the rate from Mascot to Asheville is 117 cents (Rec., 508).

A. You can by taking the distance table and finding out what the distance is from Mascot to Asheville.

Q. And then looking at the scale?

A. There is no objection to the form of publication we have, and I don't believe you ship from Mascot (Rec., 508).

Exhibit 147 shows the intrastate scale of the Southern Railway in Virginia, compared with the general interstate mileage scale of the Southern Railway.

Defendants' Exhibit 147 was received.

Mr. Crane: These are all single line scales shown in this exhibit, there are no joint line intrastate scales in the state of Virginia. Sand or gravel are shipped from Alexandria, Va., from Danville, Va., and from Mowbray, Va., points on our line in the state of Virginia. The principal shipping points of crushed stone on our line in Virginia are Culpeper on our main line, and Riverton and Strasburg on our Harrisonburg branch (Rec., 509).

In my Exhibit No. 148, I am showing the rates on sand and gravel from Alexandria, Va., to points on the Southern Railway main line and the Harrisonburg branch (Rec., 509).

[fol. 189] Exhibit No. 148 was received.

The specific rates in effect from Alexandria to points on our line in Virginia are on a higher basis than the intrastate mileage scale in Virginia. There is a regular movement of sand and gravel from Alexandria to points on our line in Virginia. The general interstate mileage scale of the Southern Railway is lower than either the specific rates from Alexandria to those stations or what the rates would be under the intrastate mileage scale in Virginia. These rates from Alexandria are specific commodity rates (Rec., 509).

On my Exhibit No. 149, I have shown our Alabama intrastate scales on sand, chert, crushed stone and slag, compared with our general interstate mileage scale (Rec., 510).

Defendants' Exhibit No. 149 was received.

Mr. Crane: The intrastate scale on sand, chert and crushed stone was fixed by the Alabama Legislature in 1907, when we were compelled, however, to establish the reduced scale at that time, we were not permitted to increase specific rates which were on a lower basis than the reduced scale. The general interstate mileage scale of the Southern Railway closely approximates the level of the intrastate scales in Alabama (Rec., 510).

There is no joint line scale in Alabama. We have in effect from certain of our stations, such as Jones and Barnsville, producing points on our line north of Selma, the 79 cents rate on sand to points in the Birmingham district, but there is practically no movement from points on our line (Rec., 511).

For the shorter distances, our interstate rates are considerably lower (Rec., 511).

In Alabama for the months of July, August, September and October, 1925, the Southern Railway Company originated but 885 cars of sand and gravel, and but 114 cars of crushed stone. I haven't any specific figures on slag, I think Mr. Ribe has already supplied the figures on that, [fol. 190] we don't have any separate classification on slag under our traffic statistics. The principal movement which we had during those months in the state of Alabama was several hundred cars which moved from Jackson, Ala. to Calvert, Ala. under a special rate applicable to shipments consigned to state, county and city authorities (Rec., 511).

In my Exhibit No. 150, I have made extracts from a decision of the Alabama Public Service Commission in Docket No. 4492 involving the rates on asphaltic limestone from Margerum, Ala. (Rec., 511).

Mr. Burchmore: I object to this exhibit on two grounds; first under Rule 13 of the Rules of Practice, unless it is accompanied by a copy of the entire decision for inspection of counsel for purposes of cross examination; second that the subject matter is entirely outside of the scope of these proceedings (Rec., 511).

Mr. Walker: I think that question has been ruled on, and I don't think it is necessary to take up the time of the Commission in arguing it (Rec., 512). The rule requires a tender of the copy for inspection and this is only an extract or portion of the decision.

Mr. Walker: We will furnish you with a copy of the decision.

Mr. Burchmore: I am asking for that and then I make the second objection that it is wholly outside of the scope of the case.

Mr. Cotterill: In the second objection I concur. I don't understand the relevancy of a citation from some decision of the Alabama Commission in which it is concluded that each commodity not here involved should be accorded rates the same as on a commodity here involved. If, for instance, we apply the ordinary test of evidence, and on the theory that this is the only evidence as to that commodity and what rates it should take, it would be unproductive of any practical results for the reason that that commodity not being before you here, there would be nothing you [fol. 191] could do with respect to it, it being utterly irrevelant to any phase of this proceeding.

Mr. Walker: Mr. Aldredge came here for the Alabama Commission, and offered testimony to the effect that there should be a different rate on crushed stone and gravel than on sand, etc., for the reason of the difference in value, etc. Now, this is offered to show that when a similar question was presented to the Alabama Commission recently, wherein we contended that there should be a higher rate on this commodity involved before the Alabama Commission than on crushed stone and gravel, the Alabama Commission found that there should not be different rates on that commodity, although the values were substantially greater than the difference in value between sand, and crushed stone and gravel (Rec., 513).

Mr. Cotterill: I don't yet get the connection, and the commodity with which the Alabama Commission was dealing in that proceeding is not the commodity involved here (Rec., 513).

Mr. Walker: And it is offered for the very purpose of showing that the Alabama Commission felt that the rates which we are proposing here are not unreasonable rates to apply in Alabama on crushed stone (Rec., 513).

After further discussion as to the relevancy and effect of the decision, the witness proceeded with his testimony without ruling on the objection.

Mr. Crane: In My Exhibit No. 151, I have compared the interstate mileage scales of the Southern Railway with the

scales prescribed by the Commission in the cases which are shown, and on the second page of the exhibit I have made certain excerpts from decisions of the Commission (Rec., 515).

Defendants' Exhibits Nos. 150 and 151 were received.

Exhibit No. 152 is merely a comparison of our scale with scales prescribed by the Commission in the Memphis-Southwestern, Shreveport and the Natchez cases. Defendants' Exhibit No. 152 was received.

[fol. 192] Mr. Brooker: The comparison on Exhibit 152 is with the interstate scale. There is an inference here that the Commission in that decision prescribed that scale in Nebraska. It was just a scale that was shown in that particular decision and the Commission did not prescribe it in that case (Rec., 516).

Mr. Crane: They prescribed higher than that for distances over 130 miles (Rec., 516).

Mr. Brooker: You may be correct in that, but they did not prescribe that scale in that scale.

Mr. Crane: That is probably true, but what they actually did was to prescribe in the second case here shown a scale which was higher.

Exam. Waters: The decision will speak for itself.

Mr. Crane: In my Exhibit No. 153, I have shown the Southern Railway interstate mileage scale in comparison with the scales prescribed by the Commission on crushed stone, slag, sand and gravel, in the eastern part of central freight association territory and in trunk line territory.

Defendants' Exhibit No. 153 was received.

In Exhibit 154 I have made certain excerpts from the Commission's decision in the Pennsylvania Sand & Gravel Producers Association Case (Rec., 517).

Defendants' Exhibit No. 154 was received.

The Southern Railway scale referred to in the excerpts in my Exhibit 154 is our present general interstate mileage scale (Rec., 518).

In my Exhibit No. 155, I have shown certain minimum rates on salt and on fluorspar which were prescribed or considered by the Commission in the cases there shown.

Defendants' Exhibit No. 155 was received.

Mr. Crane: I have shown the rates and the rate per ton [fol. 193] mile and the car revenue and the car-mile revenue. I have also shown at the bottom of the exhibit the rates for various distances under our present general interstate mileage scale, the rates per ton mile, per car and per car mile. The mileage to Chicago should be 1,004 instead of 100 miles, and the calculations are based on 1,004 miles (Rec., 518).

My exhibit No. 156 shows the so-called Meridian scales prescribed by the Commission on chert, sand and gravel, and also on slag and crushed stone, with the general interstate mileage scale of the Southern Railway (Rec., 518).

Defendants' Exhibit 156 was received (Rec., 518).

Mr. Crane: In the Meridian Case, the Commission called upon the carriers to submit to them certain proposed scales, and during the period of Federal control when that request was made, the carriers were directed, rather the United States Administration directed that the scales which had been proposed to the Georgia and Alabama Commissions in 1916 and 1917 should be submitted to the Interstate Commerce Commission in response to their request in the Meridian Case. The Alabama interests in the Meridian Case urged the Commission, and the Commission agreed with them that the scales prescribed in the Meridian Case should not be used as the basis for a general revision throughout the Southern territory. As a matter of fact, the Alabama interests urged the Commission in the Meridian Case to apply between Meridian and Alabama points intrastate scales in effect in Alabama. If it had been done by the Interstate Commerce Commission, so far as sand and gravel is concerned, the scale now applicable between Meridian and Alabama points would be on a substantially higher level than the scale prescribed by the Commission in the Meridian Case on sand and gravel, and which the Alabama complainants in this case have used as the basis of their scale. As indicating that it was never intended, certainly by the Southern Railway Company, to [fol. 194] apply the scales on sand and gravel which were submitted to the Georgia and Alabama Commissions in 1916 and 1917 for general interstate application, I refer back to my Exhibit No. 128, which shows the scale of rates in effect prior to July 1, 1922, applicable between points

on our line east of Atlanta, which scale of rates was adopted by us in the general revisions of interstate rates made on January 1, 1916, as the result of the Commission's decision in Fourth Section Violations in the Southeast, and that is the scale, the one shown on my Exhibit No. 128, that is the scale which we intended for general interstate application over our line. Since that time, as I have already explained, that scale has been reduced as the result of the revision which we made on July 1, 1922 (Rec., 520).

In other words, I think the Meridian scale is too low. I should also mention that it was prescribed between Meridian, Birmingham, Selma, Demopolis and Mobile, on the one hand, and points in Alabama within 200 miles of Meridian, and although those scales on the commodities in the Meridian case had been in effect approximately 4 years, not one of them has been extended beyond the territory prescribed by the Commission, by the Alabama Commission intrastate in Alabama. In other words, they have not recognized any one of those scales beyond the territory fixed by the Interstate Commerce Commission in the Meridian Case (Rec., 520).

The Meridian scale is used by the complainants, as I understood their testimony, and it dated back to 1916 and 1917, when it was submitted in Georgia and Alabama for intrastate application only. I think it is undoubtedly true that no producer or shipper or receiver of sand and gravel participated in the Meridian case. The fact of the matter is the slag scale prescribed in that case undoubtedly moves more traffic than the sand and gravel scale (Rec., 521).

Cross-examination:

[fol. 195] I didn't come prepared to illustrate what situations might develop that would permit the railroads to depart from the maximum scale and apply special treatment, but I can say, for instance, we have an extremely low rate on sand, shown by the record from LaGrange and Salisbury on our Memphis Division to Chattanooga, Tenn.; it is 90¢ per ton, and there is some movement under that rate, I should say 50 or 60 cars per month; that rate was put in so that LaGrange and Salisbury, Tenn., might ship sand into Chattanooga, Tenn., in competition

with Chattanooga producers. Even the complainants' scale would make a rate of $1.30 from LaGrange and Salisbury to Chattanooga. If the scale rate was applied from LaGrange and Salisbury to Chattanooga there would not be any movement of sand from LaGrange and Salisbury to Chattanooga. All we want the Commission to do is to prescribe a maximum scale of rates and allow us leeway in determining its application (Rec., 522).

We certainly want the right to consider a proposition on its merits where the maximum scale does not permit a particularly producing point to ship to a certain market, and have a discretionary right to depart from the scale where competitive conditions required it. My illustration of the movement of one product to Gainesville, Ga., which exceeded that to Atlanta, was to show that there was a very substantial movement from Chattanooga to Gainesville on a rate which was substantially greater than the right to Atlanta if the Atlanta rate were made on the full mileage scale.

No, I would not say that the movement from Chattanooga to Gainesville generally exceeds the movement from Chattanooga to Atlanta. No, I do not have the figures for [fol. 196] total movement in Georgia on roads other than our own, which I gave you for 4 months, and that was 2700 cars (Rec., 523).

Yes, it might be that there would be a number of departures from the mileage scale but the public does not suffer from that. Yes, of course, I have in mind departures from that scale to meet competitive conditions only so long as you do not create undue discriminations (Rec., 524).

If we attempted to depart from that scale, which resulted in discriminations, any party would have the right to protest to the Commission before such action is taken and have a hearing. We are only going to charge the maximum mileage scale where we can do so, but if it can be avoided, we don't want to have the adjustment foreseen so as to prevent meeting a competitive situation. Yes, I am proposing the Southern Railway maximum mileage scale. The movement from Salisbury and LaGrange to Chattanooga is exclusively over our line. I do not think there is any movement from Gaillard, Ga., to Chattanooga exclusively over our line (Rec., 525).

I didn't say we wanted to reduce our charges for the producers at Salisbury and LaGrange in order to put them into the Chattanooga market in competition with Chattanooga producers, but I say we ought to have the right to do it, and use that merely as an illustration. Yes, I think the Gaillard producers should have the same consideration as the LaGrange and Salisbury producer if he wanted to get into the Chattanooga market. When I say the same consideration, I mean the cut would not necessarily have to be the same (Rec., 526).

That would not determine the commercial necessity. If we let our people into Chattanooga by cutting the rates, the Alabama Great Southern might want to do the same thing, and I think it ought to have the right to do so. I [fol. 197] do not think that we are going to make any particular departure, but it does seem to me that we ought to have the right, if we are to promote the movement of any kind of traffic, not particularly sand and gravel, to meet situations as we find them. No, I do not think the cutting of the rate by the Alabama Great Southern and Southern to Chattanooga would necessarily monopolize that market against other shippers; it may be that the very life of a particular sand pit may depend on their having competitive rates (Rec., 527).

In proposing this particular scale as a maximum scale, I do not know the views of the other lines respecting lower rates being made effective in individual instances where circumstances warranted, but speak only for the Southern Railway System. So far as our lines are concerned, any scale which we ever propose is proposed as a maximum mileage scale, and I think it must follow that it is proposed in contemplation of circumstances which in our judgment warranted lower rates in individual instances (Rec., 528).

I would not care to commit another carrier upon that subject. The Southern Railway interstate scale has general application from different divisions of our system, which operates in both the plain, coastal and mountain regions of the South (Rec., 529).

We have not felt that in the formulation of any mileage scale for our lines it is possible to take into account all of the different transportation characteristics on different parts of our line, where there are extremes of differences

in the same territory and over the same lines, as, for example, North Carolina, the conditions are different on the main line from those on the Asheville-Salisbury line. There are operating details in the mountainous regions called difficulties, and there are divisions over which, by reason of grades, curves, etc., transportation costs are [fol. 198] relatively greater than on the more favorable operating divisions. The most we can do in devising a comprehensive rate structure is to be guided by some thought of averaging the various instances and conditions as to operating details (Rec., 530).

I have referred to one or two specific rates lower than the mileage scales in Carolina area. So far as North Carolina is concerned, I believe there is but one specific rate intrastate lower than the mileage scale, and that is on crushed stone from Stacy to Wilmington, and thus far we have been unable to secure authority from the North Carolina Commission to cancel that rate. In the past, we have had other specific rates which we were authorized by the North Carolina Commission to cancel after it prescribed its new scale in 1921, with the possible exception of the rate from Stacy to Wilmington. I believe the same rate from Stacy also applies from Mount Airy on the A. & Y. to Wilmington. I might also refer in South Carolina as to the departure we made from the scale in the rate from Wateree, S. C., to Charles due to the departure made from Columbia to Charleston. The departures from the application of the mileage scale, so far as I know, are comparatively few in that territory (Rec., 531).

Of the total number of 2790 cars, so far as Gaillard is concerned, I would say that slightly over 50% of the movement from Gaillard is to Atlanta. I cannot make an estimate off-hand what proportion of the 2798 cars were from Gaillard. I think the Gaillard man should tell you the normal movement of sand from Gaillard and Rollo, particularly to Atlanta. I can tell you what the movements were in those months that I stated to you yesterday.

Mr. Brooker: We expect to put in all this testimony as to the movement from our shippers represented here.
[fol. 199] Mr. Crane: Of course, he is merely going to show the movement from Gaillard; what I was talking about was all the shipments originating on our line in Georgia (Rec., 532).

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL., ETC., APPELLANTS,

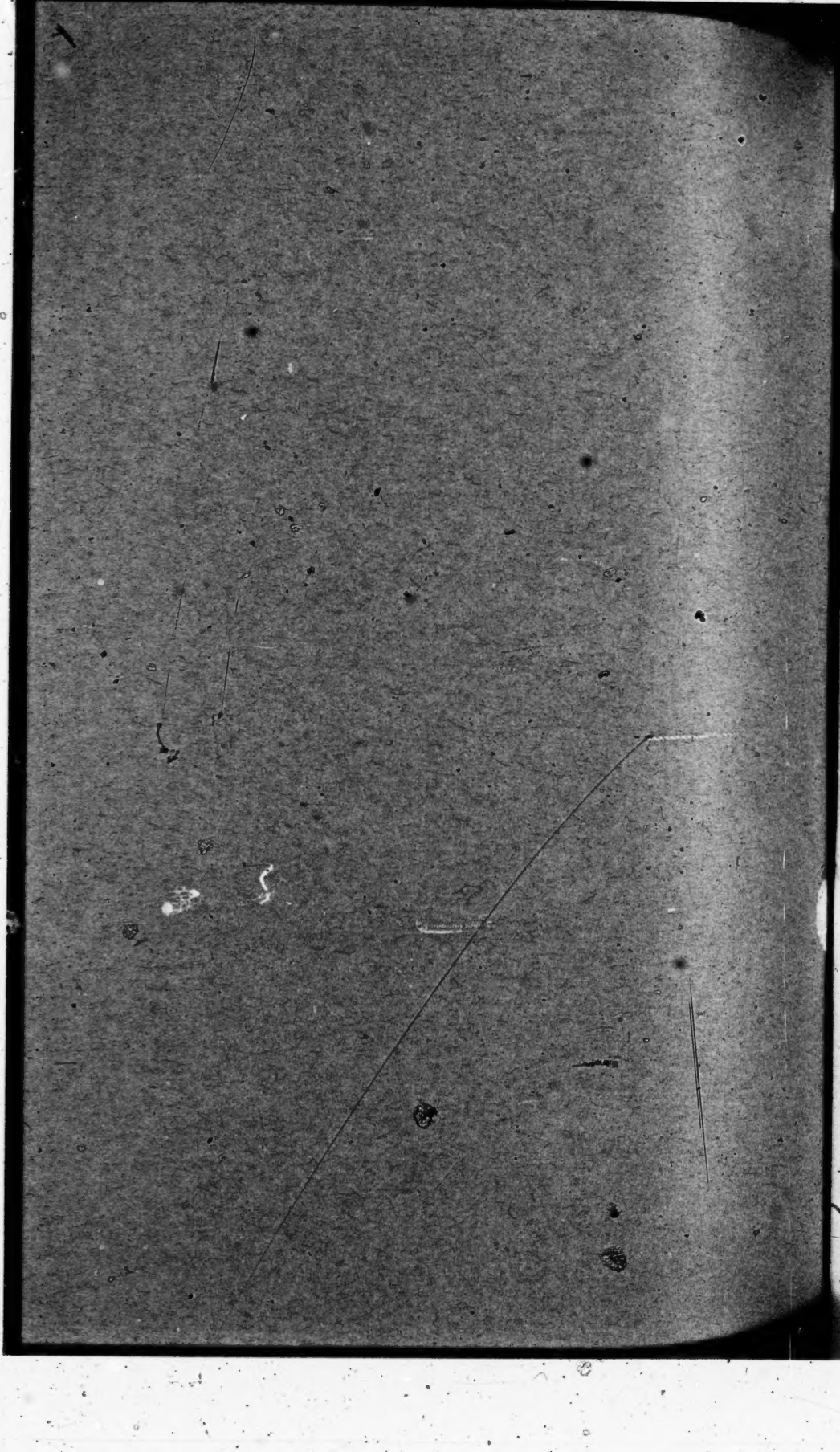
vs.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

FILED NOVEMBER 18, 1930

(35,477)



(35,477)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL., ETC., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

VOL. II

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I have not made computations respecting the Georgia intrastate revision except it affects movements originating on our line, as to whether it increases or decreases the charges in the aggregate. I sought to make an estimate for you but decided I had better not. I excluded consideration of the rate level on these products in the valley in my summary of rate comparisons because there is going to be another witness who will deal with valley rates (Rec., 533).

I do not know of any origin point which has rates to Atlanta on sand, gravel, crushed stone and slag that are on a basis lower than the Georgia scales.

(Witness excused.)

F. A. BURKE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am Commerce Agent for the Nashville, Chattanooga & St. Louis Railway at Nashville, Tenn., and have been connected with its Traffic Department for a number of years.

There are three routes from Chattanooga to Atlanta, the Southern, the Central of Georgia, and the N. C. & St. L. and the N. C. & St. L. is the shortest route, with a distance of 137 miles. There is one sand pit on the Atlanta Division [fol. 200] of the N. C. & St. L. between Chattanooga and Atlanta, located at Allatoona, Ga., about 40 miles north of Atlanta or 97 miles south of Chattanooga (Rec. 535).

At Graysville, Ga., there is a stone crusher, which is 16½ miles south of Chattanooga and 120 miles north of Atlanta, right at the Tennessee-Georgia boundary line. There is one shipper at Chattanooga who ships sand and gravel and he comes in competition with the crushed stone from Graysville with their gravel. There is a substantial movement of crushed stone from Graysville and a substantial movement of gravel from Chattanooga. In explanation of what my exhibits are intended to show, I may say that No. 158 shows the present rates on gravel from Chat-

tanooga contrasted with the rates for the same distances on the Georgia Commission's scale.

I will illustrate one point, from Chattanooga to Albany, Ga., the third point on the exhibit, the rate on gravel is $1.80 from Chattanooga; for the same distance on the Georgia Scale, the rate on gravel or crushed stone would be $1.70, and on clay gravel and sand it would be $1.60. That is illustrative of the entire exhibit, which consists of three pages (Rec., 536).

My Exhibit No. 159 contrasts the present rates on gravel from Chattanooga, Tenn. with the rates on crushed stone from Graysville, Ga., sand and gravel. Well, really the gravel is where that competition exists, gravel with the crushed stone. This exhibit speaks for itself.

My Exhibit No. 160 compares the interstate scale of the N. C. & St. L. Railway on the Atlanta Division, which applies from Chattanooga, with the intrastate rates that are applicable on that division between points in Georgia. The intrastate scale applies on crushed stone from Graysville, Ga., and the interstate scale applies on gravel from Chattanooga, Tenn., to points on that line in Georgia. This [fol. 201] exhibit speaks for itself.

Exhibit No. 161 compares the scale applicable on the N. C. & St. L. Railway from stations north of Chattanooga to stations on the Atlanta Division in Georgia. Now, there is a movement, or has been a movement of sand and gravel from Estill Springs, Tenn., which is located between Chattanooga and Nashville on the N. C. & St. Railway, to points in Georgia on the N. C. & St. L. Railway. This exhibit speaks for itself (Rec., 537).

Exhibit No. 162 compares the rates on sand and gravel to representative points in Georgia with the rates as they would be under an application of the Memphis-Southwestern Scale.

Exhibit No. 163 compares the present rates from Chattanooga with the rates as they would be on the Shreveport Scale. In connection with these two exhibits, on my later exhibits, I have shown the present rates from Chattanooga to Dalton, Rome, Atlanta and Augusta, Ga., and opposite those rates I have shown the proposed rates. The present rates are less than the carriers' proposed scale, and it is the purpose of the carriers, provided the Commission ap-

proves it, to increase the present rates to those points to the basis of the carriers' proposed scale, and I have endeavored to justify the proposed rates as well as the present rates from Chattanooga to those points.

My Exhibit No. 164 is similar to the two preceding exhibits, and compares the rates to specific points in Georgia with the mileage scales prescribed by the Intertsate Commerce Commission in I. C. C. Dockets 9389 and 13662. In showing the rates in I. C. C. Docket 9389, I have used the rates as set out in Interstate Commerce Commission's decision in Docket 16021, 100 I. C. C., 411, and those rates represent the existing rates as we understand them; in other words, it does not contain the entire increase of 40 per cent under Ex Parte 74 (Rec., 538).

[fol. 202] No. 165 is self-explanatory and No. 166 contains excerpts from the Commission's decisions in which they have held that rates in the South might reasonably be higher than the rates in C. F. A. and Trunk Line Territories. As to Exhibit No. 168, I call attention to the fact that through error the proposed rate from Chattanooga to Dalton is shown as 70¢. This should read 77¢ under present rates. Exhibit No. 169 has reference to rates which the Interstate Commerce Commission dealt with from Graysville, Georgia. In that case, the N. C. & St. L. took the position that the existing rate from Graysville to Chattanooga was submormal, but the Commission found that the rates in effect at that time were not unreasonable. The rates I have shown are the modern equivalent of the rates found not unreasonable by the Commission in 1916 (Rec., 539).

In other words, that rate from Graysville to Jacksonville, for example, would be $2.25 at the present time, whereas our proposed joint line scale is $2.12.

By Exam. Waters:

Q. Is it that at present, that rate from Graysville today, does that represent the existing rate?

A. No, these are the rates that the Commission found not unreasonable in 1916, increased the specific amounts, I did not go back to check up the rate from Graysville.

The Complainant's Exhibit No. 12 filed by Mr. Ribe undertakes to show rates from certain Tennessee points to

Memphis, Tenn., and I wish to call attention to this exhibit understand, it shows the movement of sand from Summerville, Tenn., and shows Summerville as located on the Louisville & Nashville Railroad; Summerville is not located on the L. & N. Railroad, but is located on the Southern Railway and the N. C. & St. L. Railway, and there is no movement of sand from Summerville. And he also shows Warren, Denmark and Jackson, Tenn., in this exhibit; there is no movement of sand from those points. And he shows a [fol. 203] movement of gravel from Mercer, Denmark and Summerville, Tenn., and there is no movement of gravel from those points (Rec., 540). Now, he shows in that exhibit some rates of the N. C. & St. L. Railway on stone and gravel to Memphis, Tenn., but he did not explain that those rates were highly competitive rates; in other words, the N. C. & St. L. Railway was forced by competition to establish some very low rates to points in West Tennessee in order to enable the quarries and gravel pits to compete with the nearby gravel pits from which the rates were very low, and for this reason we have put in these very low rates to Memphis, Tenn.

The comparison of the interstate scale applicable west of Chattanooga on the N. C. & St. L. with the interstate scales applicable in Tennessee, is shown by my Exhibit No. 170. We took the position that the intrastate rates in Tennessee on the sand and gravel are below the normal low; our several attempts to increase these rates have been denied by the Tennessee Commission.

My Exhibit No. 171 shows the comparison of rates from Estill Springs, Tenn., on sand and gravel, with the joint line scale. These last two exhibits were put in as rebuttal testimony to show that the rates shown in Complainant's Exhibit No. 12 were less than the rates charged in a number of instances in Tennessee. Now, I beg to call attention in my Exhibit No. 171 in order to show that there is a movement of sand and gravel from Estill Springs, Tenn., to Louisville & Nashville Railroad stations (Rec., 541).

Mr. Gwathmey: Mr. Examiner, we now make formal tender of Mr. Burke's Exhibits Nos. 157 to 171 inclusive.

Exam. Waters: They will be received unless there is objection, and made a part of the record.

(The statements were thereupon received in evidence, marked "Defendant's Exhibits Nos. 157 to 171 inclusive," Witness Burke," and are forwarded herewith.)

[fol. 204] Cross-examination.

By Mr. Brooker:

At the present time our rates from Chattanooga and Graysville to Atlanta are now on the basis of the Georgia mileage scale and on August 1st our interstate rate from Chattanooga to Atlanta was increased under the application of the Georgia scale. There was a low competitive rate from Chattanooga to Atlanta that was put in to enable the Chattanooga man to ship to Atlanta in competition with slag from Birmingham and was made the same as the slag rate from Birmingham to Atlanta (Rec., 542).

Prior to August 1, 1925, the rate from Chattanooga to Atlanta was established in order to enable the gravel people to compete with the Birmingham slag rates. The production at Allatoona, Ga., is not big, about 18 cars of sand were handled in 1925. The movement from Estill Springs, Tenn., to Georgia points was relatively small, as we handled about 7 cars in 1925.

Q. Your Exhibit No. 169, showing rates on crushed stone from Graysville, Ga., to destinations in Florida since the decision of the Interstate Commerce Commission in that case, isn't it true——

Exam. Waters: What case?

Mr. Brooker: The case mentioned on that page, I. C. C. Docket 7062, isn't it true that this basis which the carriers are now proposing has been adopted and is used in formulating the rates from Birmingham and Chattanooga districts to those stations (Rec., 543)?

A. I can't answer as to Birmingham, we don't serve Birmingham, but we did check in rates from Chattanooga and Graysville, Ga., in line with the carriers' proposed scale, that is generally, there were some exceptions to that. [fol. 205] Practically all of the commodity rates which have been established within the past few years have been put into effect on a basis not higher than the carriers' pro-

posed scale in this proceeding. As to the intrastate rates mentioned in my Exhibit No. 170, we think our scales are below what might be reasonable maximum rates in Tennessee. If the carriers' proposed scale were applied to both interstate and intrastate movements in Tennessee, it would result in advances in some cases, but I could not say that they would be material advances; Exhibit No. 170, however, shows the result of applying the proposed scale (Rec., 544).

In a good many cases it is true that our present interstate rates in Tennessee are lower than the carriers' proposed scale. We handled one car of sand from Chattanooga to Atlanta in 1925. I do not know whether the other lines handled any or not. We handled no crushed stone from Chattanooga. If we did handle sand or crushed stone from Chattanooga to Atlanta, it would not move in returned empty coal equipment. The movement of coal is southbound (Rec., 545).

By Mr. Cotterill:

The N. C. & St. L. has a great deal of branch line mileage and the majority of that mileage is in the mountain sections. There are widely contrasted differences in operating circumstances between those mountainous branches and some portions of our main line. At one time we carried three mileage scales on sand between our stations, and we made rates on the branch lines higher than we did on the main line, but finally we got away from that and adopted the main line scale for application over the entire system. The fact is, our existing mileage rate structure and that now proposed here is for uniform application over all parts of our system as a maximum scale. That rate level would be applicable in the lowland sections of the South, but we are not now making particular stress of the mountainous territory we serve (Rec., 546).

[fol. 206] Mr. Gwathmey: Mr. Examiner, I assume it is understood by everybody that we are not here in this proceeding making any proposal to adjust the entire rate structure in the South or in the state of Tennessee; the carriers have said that it is their clear intention if they can do it to apply their proposed scale generally interstate and intrastate, but that really is not in issue here, and it

seems to me it is rather unnecessary to go into detail as to what the application of the scale would do here and there; if it were a matter at issue now as to whether it should be applied all over the South, I have no particular objection, but it seems to me it is rather taking up time.

Mr. Cotterill: I was of the impression that the carriers attributed to their proposed scale the merit that it was suitable for uniform and general application throughout the South, and was conceived in that purpose.

Mr. Gwathmey: But there is no issue of that sort here.

Commissioner Lewis: I understand the question that Mr. Cotterill is trying to ascertain from this witness is whether it is thought by this witness that one scale will meet all operating conditions equitably down in this district, is that correct, Mr. Cotterill? (Rec., 547.)

Mr. Cotterill: Yes, sir.

Commissioner Lewis: Taking into consideration the mountain regions and the low regions?

Mr. Cotterill: Yes, sir.

Commissioner Lewis: You are insisting here that back of all this and particularly brought in issue here by the carriers' proposal is the placing before the Commission of one scale which would be applicable to all these regions down here?

Mr. Cotterill: Yes, sir, and I frankly am anticipating the [fol. 207] point of view of one of the lines not yet heard from, in which, in contrast with the point of view of the other Defendants, it suggests that under some circumstances there should be a different rate level over different portions of its line, and I had thought that it was appropriate in considering the proposed scale of the carriers as a whole, to make it apparent in the record that the measure of that scale was conceived with the thought of general application, and disregarding any variation of operating detail. I think that discussion has gone sufficiently far, and there is no occasion to go into it any deeper now (Rec., 548).

By Mr. Moffett:

We have a rate on slag from Cowan, Tenn., to Atlanta, Ga., the figure of which I don't recall, but the distance is approximately 200.9 miles; if the published tariff is $1.30, that is the legal rate.

By Mr. Price:

The decision of August 1st necessitated an increase of these competitive rates from Chattanooga to Atlanta, Rome and Dalton, to clear the Georgia scale. Those are the principal points of consumption that would use our materials out of Chattanooga (Rec., 549).

We made no revision of rates that were non-competitive and higher than the Georgia scale out of Chattanooga. The revision covered only competitive rates.

By Mr. Brooker:

The big movement in gravel from Tennessee points over our line is to Atlanta and the big movement in crushed stone from Graysville was also to Atlanta.

By Mr. Price:

I believe the rate from Graysville to Atlanta was increased under the Georgia revision.

Commissioner Lewis: Mr. Gwathmey, this witness ap- [fol. 208] pears in the role of the Defendant I guess in one of these complaint cases, doesn't he?

Mr. Gwathmey: Yes, sir (Rec., 550).

Commissioner Lewis: Was Mr. Crane's appearance here as respondent or defendant, was that the investigation case?

Mr. Gwathmey: I can't answer, I don't represent Mr. Crane, however, the N. C. & St. L. Railway is interested in the investigation case, too, of course.

Q. Now, it is inevitable, particularly in the light of some of the things that have been said in the Southeastern Case and various other matters which have come up, including Mr. Crane's testimony, the question of whether this proposed scale of the carriers was to be applied purely as a maximum scale. What have you got to say about that?

Mr. Burke: Mr. Commissioner, our company reserves the right in certain cases to meet competitive conditions, in proposing the scale we proposed it as a maximum scale, but we believe that under competitive conditions we should be permitted to go below the scale provided we don't violate the law in doing so.

By Commissioner Lewis:

We reduced the rate from Chattanooga to Atlanta, I believe, 1919, to meet competition (Rec., 551).

If we put in a maximum scale and the meeting of competition continues, there might be a tendency to bring us to the same conditions that seem to underly this situation and that produced the Thirteenth Section Case, but we believe there might be exceptional cases where it would not, and it is in those exceptional cases we want to have authority to make exceptions if the situation demands it. In other words, where we have say a big gravel pit, and it has got a certain market and other nearby gravel pits can come in on a lower rate and this man's very existence depends [fol. 209] upon his shipping his gravel to this certain market, and if we don't put in a competitive rate to enable him to get in there, it seems that he has to give up his business, we believe in a condition of that kind that we ought to be in a position to give him a competitive rate."

Our position is substantially the same as that of the Southern Railway (Rec., 552).

By Mr. Brooker:

I have not considered the present competitive adjustment as between Graysville and Chattanooga and Birmingham and Montgomery, to Atlanta, because I am trying to defend the reasonableness of the rates; we have had a Section 1 complaint there and that was what my efforts were directed to. I think the rates from those points, including the rates from the Georgia producing points to Atlanta, are substantially on the Georgia scale, and effective August 1, 1925, the rates from all those points were substantially increased (Rec., 553).

By Mr. Price:

The Georgia Commission's scale did not have the effect of reducing the carriers' proposed scale, it is less than the carriers' proposed scale.

Those rates from Chattanooga to those principal market points in Georgia were never on our scale to Atlanta, Rome and Dalton; they were never on our proposed scale; and the Georgia revision increased those rates to those principal markets. I have not particularly studied the Bir-

mingham district but will say that we think and thought and took the position in our answer to the petition that the [fol. 210] adjustment of August 1st gave Chattanooga what it rightfully should have had compared with Montgomery prior thereto, so far as the differential was concerned (Rec., 554).

By Mr. Brooker:

Prior to that time, I think distance and everything considered, Montgomery had an advantage over Chattanooga.

(Witness excused.)

Mr. Gwathmey: To avoid misunderstanding, in view of the position taken by different lines here, I want it understood the Atlantic Coast Line has advocated and now advocates the absolute application of the proposed mileage scale, regardless of whom it hurts or favors (Rec., 555).

Commissioner Lewis: When you speak of absolute in that sense, you mean it shall be both maximum and minimum?

Mr. Gwathmey: Yes, sir, subject to possible minor groupings, as, for example, the grouping Mr. Doss explained to the minimum 15 mile area (Rec., 556).

Mr. Burchmore: I would like to inquire if from Savannah to Atlanta, for instance, intrastate, the 290 mile route of the Southern Railway and Central of Georgia should be allowed to put in a cut rate because there is a 260 mile route between those two points; in other words, can they make a 260 mile rate over a 292 mile route intrastate without violating the technical properties of the mileage scale that they propose? (Rec., 557.)

Mr. Doss: Our position in that case would be that the lowest distance route would make the rate, and the other lines would meet that rate between those two points, but not to intermediate points necessarily (Rec., 558).

(Witness excused.)

[fol. 211] W. R. Hughes was called as a witness and, having been duly sworn, testified as follows:

Commissioner Lewis: Mr. Martin, under which of these proceedings is this witness appearing here?

Mr. Martin: In Docket 17763, the question of the relationship of the rates to apply on crushed stone and the rates to apply on said and gravel are all in issue, and I understand that in all these cases the relationship of these materials is one important issue. Now, we are simply here, this witness is here for the purpose of showing that his material should bear the same relation to the rates on sand and gravel that other broken stone does, he is a shipper of broken stone, and his testimony is just as pertinent here as that of any other shipper of broken stone.

Mr. Walker: Do you ask the Commission to enter an order in this case requiring the carriers to provide or establish the same rates on asphaltic limestone as on crushed rock?

Mr. Martin: Yes, sir, and we will show you why.

Mr. Walker: We have not met that issue, and are not prepared to meet it at this time.

Mr. Martin: The Alabama Public Service Commission says it is broken limestone, and we say it is broken limestone, and we will provie it to you if you will give us a chance.

Exam. Waters: Haven't you got a formal complaint covering all this situation?

Mr. Martin: I have.

Exam. Waters: Won't it be determined in that case?

[fol. 212] Mr. Martin: Perhaps so, but we don't want to be in that case in the position of having our case pre-judged and controlled by this case without any opportunity of putting our situation before the Commission.

Exam. Waters: Isn't this offered by you just merely in order to get your position in this case so that you will not be prejudiced by anything that might be said in this case on account of your formal case that is coming?

Mr. Martin: That is correct, that is our position.

Exam. Waters: Is there any objection?

Mr. Walker: None on our part.

Mr. Martin: We are not asking the Commission to make a specific ruling on it, but we want the Commission to look at our situation when they decide this case.

Mr. Walker: There is no objection to the testimony for that purpose.

Mr. Martin: The witness will have a technical description of this material.

Exam. Waters: All right.

Direct examination (Rec., 564):

By Mr. Martin:

I am a paving contractor, Vice-President and Manager of the Uvalde Paving Company, Dallas, Texas, and have an interest in the production of asphaltic limestone at Margerum, Alabama. I am familiar with the material produced there, which is similar in all respects and in appearance to ordinary blue limestone, containing from nothing to as much as 6½% asphalt. In the quarrying, the leaner ma- [fol. 213] terial is picked out and the richer material shipped for paving material only, not as a pavement. At destination it goes through a grinding and fluxing process, when more bitumen is added to soften that already in the rock and prepare it as a paving material. This is heated in the plant and made much like sheet asphalt or asphaltic concrete (Rec., 565).

It is shipped as broken stone and I know of no other manner by which to ship it. We have made extensive experiments to prepare it as a ready to lay pavement. It is not possible for the ordinary layman to distinguish that product from ordinary limestone without some physical or chemical test. I am not sure that it is shipped as rip rap or ordinary broken stone, but I know it is the producers' intention to ship it as such. It is used for all purposes ordinary broken stone is used for, with the possible exception of agricultural fertilizer. This question was before the Alabama Public Service Commission recently and they found it to be a limestone and prescribed limestone rates, crushed stone rates (Rec., 566).

(Thereupon there was offered and received in evidence, without objection, a copy of the finding of the Alabama Public Service Commission, marked, "Intervenor's Exhibit No. 172, Witness Hughes.")

I call particular attention to page 2, paragraph 3, of that exhibit, which describes the material. We think the rates prescribed are rather high, and desire a lower rate, espe-

cially on the long haul. Since the decision of the Alabama Public Service Commission, the Southern Railway and Mobile & Ohio Systems have given us the same rate on this mileage basis for interstate and intrastrate, over all of those systems, including also I think the Alabama and Vicksburg Railway (Rec., 567).

[fol. 214] I understand this same question is pending before the Interstate Commerce Commission, Docket No. 16031, for there is a tentative examiner's report, which I think is practically the same as the Alabama Commission's finding (Rec., 568).

This same question of rate and classification is also before the Commission in Docket 17805, where the whole adjustment of rates through a very large territory is involved.

Mr. Walker: I just want the record to be clear that it is understood by all parties that this question is not involved in this proceeding, and that this witness's testimony was offered merely to set forth this shipper's contention that he has made in other cases. Am I correct in that, Mr. Examiner?

Mr. Martin: I take this position, that our rates are involved, and seriously involved, if you prescribe a scale of mileage rates that applies from some competing rock crushing plant, and do not make the same rates apply on our material, from our points, we are going to be at a very serious disadvantage (Rec., 569).

Mr. Walter: That is your misfortune, if you wanted to bring that question in issue here, you should have had a complaint set for hearing at this time. We certainly have not had an opportunity to give that matter any consideration, and if you want to raise that question, you will have to raise it, as I understand it, in another proceeding, and our testimony will be offered at that time. We certainly have not offered any testimony on it, and we are not called on to offer any testimony here.

[fol. 215] Mr. Martin: It is limestone, you can't get away from that.

Mr. Walker: If it is limestone, there is no question, but the question of whether or not it is limestone is not involved in any of these proceedings.

Exam. Waters: We are letting this evidence in with the reservation, of course, that we are going to give due con-

sideration to it, as to whether or not it broadens the issues in this case, also having in view the fact that it is involved in another case, and with those reservations, we are letting it in with all the objections that have been made (Rec., 570).

By Mr. Burchmore:

It is not true that the selling price of the material I have described is from $6 to $8 a ton; it is from $2.50 to $3.50 per ton; and the selling price of ordinary crushed limestone, not supposed to contain asphaltum or bitumen, runs from $1.20 to $1.50, I believe. I am not familiar with government reports showing the average selling price of crushed limestone as considerably under $1.00 a ton in almost every state of the U. S. My statement is based on my familiarity with prices around Dallas, Texas, and I have not bought any limestone at any other point in several years; it may be much cheaper than that.

Mr. Burchmore: Mr. Commissioner, may I call attention to the fact that this exhibit No. 172 fulfills the promise made by Mr. Crane that he would file this same exhibit in connection with this exhibit No. 150, which was an extract from this report, so that he I presume is excused from filing it (Rec., 571).

[fol. 216] Mr. Walker: Mr. Commissioner and Mr. Examiner, I think that we are certainly entitled to a ruling of the Commission at this time as to whether or not the rates on this commodity are involved. We did not undertake to meet that issue here, and are not prepared to meet it.

Mr. Brooker: We want to add for the crushed stone producers that we are vitally interested in this question as to whether this material should take the same rates, for this reason, that in order to make the same kind of road as this material will make, it is necessary for the contractors to add asphalt to our crushed stone in order to make the same kind of a road, therefore if you let this material come in on the same basis as crushed stone without giving us a chance to put in evidence in regard to it, we are going to be at a material disadvantage.

Exam. Waters: It is our view that we don't think that we should in this case, at least the issues are not sufficiently broad to permit us to find as an absolute fact what this

commodity, the rate it is entitled to, that fact is involved, that question is involved in another case. Now, this evidence, it has been my understanding, it has been my thought, that it would be permitted to come in just to get Mr. Martin's contention on the record, I don't think the Commission would make an absolute finding of what this commodity, the rate it is entitled to, in view of the fact that it is involved in another formal complaint covering a much broader territory, and where you will no doubt make a much broader showing (Rec. 572).

Mr. Walker: That is satisfactory to us.

Mr. Martin: It is satisfactory to me.

Mr. Burchmore: It is satisfactory to us.

(Witness excused.)

[fol. 217] L. E. Chancellor was called as a witness and, being duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am Assistant General Freight Agent of the Central of Georgia Railway, in its Traffic Department for more than 16 years. My company is defendant in the formal complaint putting in issue the rate from Howard, Ga., to Birmingham, concerning which Mr. Brown, a shipper at that point, has testified (Rec. 573).

The only points in the Howard district from which there is a movement of sand to Birmingham are Junction City, Howard and Dry Ridge. Junction City is on the Central and the AB&A. The movement of sand from Howard, Ga., the largest of the three shipping points, has continued for more than 20 years, and I file as my exhibit a statement showing the chronological changes in rates from Howard to Birmingham from July 1, 1906, to date.

(Without objection, the statement was thereupon received in evidence, marked "Defendant's Exhibit No. 173, Witness Chancellor.)

Mr. Chancellor: The only changes made reflect the general advances and reductions. We have maintained

throughout this period a rate to Birmingham, reached by our own rails, the same as from L&N sand pits in the Montgomery District (Rec. 574).

My company thought it necessary to establish this low rate to permit a movement in competition with other sand shipping points located near the Birmingham District, and with the idea that it would furnish loadings for some of the coal cars moving toward the coal mines in the vicinity of Birmingham, which otherwise would be handled empty. [fol. 218] Throughout all these years the movement has been almost altogether in empty coal cars returning to the Alabama coal fields.

I also file a statement showing a comparison of the movement to the Birmingham District with that to all other destinations for the entire year of 1925.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 174, Witness Chancellor.)

This statement discloses that practically the whole movement from that district has been to Birmingham. The Central of Georgia recognizes that the rate is very low and that but for the unusual conditions in handling the traffic, it would be unremunerative (Rec. 575).

Notwithstanding the low character of this rate, in view of the manner in which the sand is handled, we have felt that it afforded some profit above the added cost of doing the business, and as long as this is the case and the resulting rate is no lower than from competing points, it should not be increased until a revision has been made in the rates between points in Alabama, as to do otherwise would in our opinion destroy the investments that have been made at Howard. Testimony has already been submitted respecting the measure of the rates on sand and gravel and other related articles which the carriers proposed for use in the revision of intrastate rates in Georgia and Alabama and interstate rates generally between points in Southern Territory; we believe that the rates under the scale are reasonable rates for this class of traffic, but thinking that it would be impossible to apply rigidly any mileage scale on sand and gravel, and other related articles without in some instances cutting off entirely important movements, and

thereby depriving the communities of the opportunity of disposing of their product.

[fol. 219] Cross-examination.

By Mr. Burchmore:

I don't know the distance from Junction City to Birmingham over the AB&A, but there is not a great difference in the mileage of the two roads (Rec. 576).

Yes, my position is we don't want these rates from Howard and Junction City disturbed until there is a re-adjustment from the competitive territory in Alabama, which is not in review here. In fixing these rates from Howard to Birmingham, we consider the volume of the movement; the rates have been in effect for so many years I could not say how large the movement was; there is a substantial movement, and it is practically confined to Birmingham, so those are the reasons for fixing a low rate (Rec. 577).

One of the considerations in fixing special rates on any commodity, departing from the scale, would be the volume of the movement; it would not be controlling, it would be considered. Our distance to Birmingham is around 190 miles; Montgomery is around 97 miles.

From our producing points the same rate applies today from Montgomery to Birmingham (Rec. 578).

Q. Now, if the authorities in Alabama were to sanction an increase in the charges from Montgomery to Birmingham so as to make them conform to a general mileage rate system and level, do we understand that you are then agreeable to the application of that mileage system from the producing points on your line to Birmingham?

Mr. Burchmore: I object to that question.

Mr. Chancellor: I can't say that we would, Mr. Cotterill (Rec. 579).

Under the special circumstances, and bearing in mind [fol. 220] that Howard slips only to Birmingham, and must meet the competition of Alabama, and that the enterprise depends on that Birmingham market, we feel it necessary to give it special treatment.

We would not feel justified in going below the rate from the Montgomery district, we would not think that would be proper, but so long as we preserve a parity with them, we think there is no hardship imposed upon the Montgomery shipper.

The Montgomery shipper is 90 miles from Birmingham and the distance from out pit to Birmingham is about 190 miles (Rec. 580).

Exam. Waters: I understand this witness believes in a parity of rates between Howard and Birmingham and Montgomery and Birmingham, regardless of the disparity in distance?

Mr. Chancellor: In this particular case, we do.

By Mr. Burchmore:

To a limited extent the Central of Georgia transports between Montgomery and Birmingham but I do not think we haul sand, gravel or crushed stone, and if we did our road would be very much longer than other roads between those points. To my knowledge there are no other shippers or shipping points on the Central of Georgia, shipping to Birmingham, excepting the three named on my Exhibit 174. Our line or the line in which we participate from Montgomery to Birmingham is 155 miles greater than the direct line between those points (Rec. 582).

By Mr. Brooker:

I show that we publish a rate of 79¢ accorded Montgomery shippers over the long haul route from Montgomery to Birmingham.

By Mr. Price:

The pits at Montgomery are in the switching district so [fol. 221] there would be a switching charge to our line, and no switching charge at Howard (Rec. 583).

In addition to this 156 miles, we would have the switching to take care of at Montgomery but would not at Howard. As I testified, I don't know of any movement we have handled from Montgomery to Birmingham. We would be more justified in handling it from Howard to Birmingham than from Montgomery; there, there is a different situation with respect to empty coal cars going back to the mines.

Redirect examination.

By Mr. Gwathmey:

If we participated at all in a movement of traffic from Montgomery to Birmingham, it would be handled via Central of Georgia, through Columbus, and thence to Birmingham (Rec. 584).

Columbus is directly east of Montgomery. This traffic would really move in an eastward direction, almost extent of the total distance from Montgomery to Birmingham. There is no intrastate route over the Central. I doubt seriously if there is such a movement; it would be a very unusual one if there is, and would be routed via Union Springs and Columbus (Rec. 585).

(Witness excused.)

T. T. Masengill was thereupon called as a witness and, having been duly sworn, testified as follows:

By Mr. Gwathmey:

I am Assistant General Freight Agent of the Seaboard Air Line, headquarters at Norfolk, Virginia, and have been in the freight traffic department since 1908, and in my present position since March 1, 1920.

[fol. 222] The importance to the Seaboard of the sand and gravel tonnage involved here is substantial. We serve numerous sand and gravel pits and crushed stone quarries and likewise reach the important Birmingham district in which there is produced an enormous quantity of slag (Rec., 586).

For 1922, the Seaboard carried approximately 1,172,000 tons or 11.1% of the total tonnage carried. For 1923, approximately 2,011,300 tons, or 13.4% of the total tonnage carried. For 1924, 2,463,400 tons, which was 15.9% of the total tonnage carried by Seaboard Air Line. Figures for 1925 are not available.

The most important shipping points are at Petersburg, Va., gravel and sand; at Careysburg, N. C., just east of Weldon, N. C., gravel and sand; at Preston, N. C., approximately 50 miles east of Raleigh, a crushed stone quarry;

at Peedee and Lylesville, N. C., sand and gravel pits, these are located just east of Wadesboro, N. C.; at Mount Holly, N. C., just west of Charlotte, an important sand pit. In South Carolina, the most important production of these commodities are at Columbia, that is crushed stone of all characters and sand (Rec., 587).

In Georgia, we have important stone crushing plants at Oglesby, Ga., near Elberton, and at Ladd's, Ga., approximately 6 miles south of Cartersville. I have already referred to the Birmingham district in respect to slag. In South Georgia, at Everette, just north of the Florida State Line, is an important shipping point of sand. We likewise reach the Montgomery district on sand and gravel, and located approximately 9 miles east of Montgomery, at a point known as Medlin, is an important shipping point of what is known as clay gravel.

There is an enormous tonnage of sand, gravel and crushed stone from points on the Seaboard in North Caro-
[fol. 223] lina. It is a matter of general common knowledge that the state of North Carolina has been engaged for the last five or six years in the most extensive road building project of any state in the entire South (Rec., 588).

My exhibits Nos. 175 and 176 show in somewhat more detail the restrictions used by the North Carolina Commission and the respective orders issued by that Commission affecting rates in North Carolina on these commodities.

(The statements were thereupon received in evidence, marked respectively, "Defendant's Exhibit No. 175, Witness Masengill," and "Defendant's Exhibit No. 176, Witness Masengill.") (Rec., 589.)

I represented the Seaboard at the hearing in Raleigh in November, 1921, which resulted in the Commission's issuance of Circular No. 224, shown on sheet 3 of Exhibit 176. My exhibit No. 177 gives a comparison of the Florida intrastate mileage scale on gravel, slag and crushed stone, with the carriers' proposed single line scale.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 177, Witness Masengill.") (Rec., 590.)

The Seaboard's tariffs publishing those rates carry a reference to the act of the Legislature of Florida authorizing establishment of low rates for state, county and municipal purposes on these commodities, as shown by S. A, L. Tariff I. C. C. A-7148, Page 4-A. It has been the belief among the principal trunk line carriers in Florida that it was mutually advantageous to carriers and citizens of that State to assist in developing the State, and this schedule of rates is the carriers' contribution toward making the delivered cost of road building materials used by state and municipal authorities as low as possible (Rec., 591).

[fol. 224] These rates were established as early as 1911. Whether the carriers I represent believe in a continuance of the lower rates for those purposes, I can't say as my present purpose is to show that they were never established by the railroads (Rec., 592).

I can't give an indication of the carriers' present policies, and speak only for my company that these rates are charged today under the circumstances I have just stated. No intrastate rates in Florida can be advanced without previous authority from the Florida Railroad Commission.

Mr. Gwathmey: Replying a little further to the question you asked a moment ago, Mr. Examiner, I will say that Mr. Doss advises me that the Atlantic Coast Line has several times tried to take out some of those rates, and the Florida Railroad Commission would not let them; that is my understanding of the situation from the Coast Line's standpoint.

Mr. Masengill: Mr. Doss and Mr. Crane have filed statements which show in fairly complete detail all of the important mileage scales applied on the Trunk Lines in the Southern States, and in several of Mr. Doss's Statements he has made reference to the interstate mileage commodity scale on chert, sand and gravel, slag and crushed stone of the Seaboard Air Line. I file as my Exhibit No. 178, a two-page statement, being a chronological statement of the scale, the interstate scale of the Seaboard Air Line, and would like to briefly relate some of the history in connection with the establishment of those rates (Rec., 593).

Exam. Waters: The exhibit will be received and made a part of the record, if there is no objection.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 178, Witness Masengill.)

[fol. 225] Mr. Masengill: Just prior to the hearing before the North Carolina Commission in November, 1921, due to the intensive program of the North Carolina Highway Commission in constructing roads in that state, shippers of crushed stone and sand located at Columbia made requests on our Division traffic officer for a scale of rates from that point to points in North Carolina, due to the fact that we had at that time no interstate mileage scale in effect. The Seaboard published effective August 20th, 1921, for application between points on its line, single line hauls in North Carolina and South Carolina, the schedule which I have shown in this statement under the description 1-A. This scale applied only on gravel, sand except moulding sand, and crushed or rubble stone. The schedule was reduced 10 percent effective July 1st, 1922, under Reduced Rates 1922, and its application was extended to also apply on stone screenings, slag and cheft. The addition of slag to this commodity description was in response to a request from the traffic officers of the Chesapeake & Ohio Railway, who advised that the owners of Virginia furnaces located on their lines in Virginia were seeking a market in the Carolinas within a radius of 250 miles from Norfolk, Richmond and Lynchburg, Va., in order to dispose of a large accumulation of this furnace slag (Rec., 594). This schedule of the Seaboard Air Line was first established to apply on the Virginia slag. In July, 1921, Mr. Ribe, Traffic Manager of the Birmingham Slag Company, and Mr. Linthicum, traffic manager of the Ladd's Lime and Stone Company, wrote our traffic department requesting an extension of the Seaboard Air Line's interstate mileage scale up for distances to and including 600 miles; the original scale was published to include distances of only 400 miles. Both of these gentlemen represented to us that on the one hand they desired to ship slag from [fol. 226] the Birmingham district, and the other crushed stone from Ladd's, Ga., into the Carolinas. These requests were given due consideration, and finally after conferences between the shippers and our traffic officer, the Seaboard published effective September 29th, 1924, the schedule of rates shown in this statement under column

2-D. You will observe from the second sheet that the scale was extended for distances 400 to 700 miles. I should also state that the rate of the schedule from 5 to 400 miles was the same as the interstate mileage scale of the Southern Railway single line which Mr. Crane introduced yesterday, but with respect to the distances in excess of 400 miles, it was the opinion and judgment of our executive traffic officer that the scale was too low, so that one of the considerations entering into the increase in this scale for the longer distances was the fact that it should earn as minimum revenue approximately 4 mills per ton mile at 700 miles (Rec., 595).

At the time this schedule was established, the commodity description was changed to also include chert, sand and gravel, washed or unwashed. The carload minimum was the marked capacity of the car, except where cars were loaded to their physical capacity actual weights would govern. The application of the scale was likewise substantially increased; whereas previously our mileage scale applied only between points in North and South Carolina, this scale for 700 miles was extended to apply to all points on the Seaboard Air Line System, single line hauls, in the states of Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida, to and including Baldwin, Fla. That reservation takes in what is commonly known as the North Florida Territory on the Jacksonville-River Junction Line.

[fol. 227] Our instructions from our traffic officers were that that scale was predicated on minimum earnings of 4 mills per ton per mile for distances as great as 700 miles. My exhibit No. 178 compares that scale with the carriers' present and proposed scales (Rec., 596).

I have previously referred to the fact that the Chesapeake & Ohio Railway officials desired a scale which will enable their shipments to reach the Carolinas. I file as my Exhibit No. 179 a comparison of the Seaboard Air Line's single line scale with the Chesapeake & Ohio Railway's scale applicable from furnace points located on that line in Virginia to stations on its line in Virginia.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 179, Witness Masengill.")

In order to meet the wishes of the presiding Commissioner, I have eliminated all duplicate figures of the Seaboard Air Line making comparison of the rates both specific and mileage from Birmingham and from Montgomery, which have been fully covered by the statements filed by Mr. Doss. I do wish to file as Exhibit No. 180 a statement showing the rates on slag from Birmingham to points in Georgia, compared with the rates on slag and gravel from Lylesville, N. C. to important points in South Carolina and Georgia, and at the bottom of the statement a comparison of the single and joint line rates on slag from Birmingham to South Georgia points, as compared with the rates on slag from Birmingham to points in Alabama (Rec., 597).

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 180, Witness Masengill.")

Mr. Masengill: In Exhibit No. 181 I show a comparison of the number of carloads and average weight of clay [fol. 228] gravel, sand and stone loaded at points on the Seaboard Air Line for the months June to November inclusive for the years 1922 to 1925 inclusive.

Exam. Waters: The exhibit will be received and made a part of the record, if there is no objection.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 181, Witness Masengill.")

Cross-examination.

By Mr. Brooker:

In establishing rates on crushed stone it is generally the policy to make the rates apply on broken stone and stone screenings (Rec., 598).

I am unable to compare the production of sand and gravel in North Carolina with that of Alabama, but I do know there is an enormous production of those commodities, and also crushed stone, in North Carolina on the Seaboard, and I think also on the Coast Line and Southern. My information is not authentic enough to make any statement respecting the movement from Alabama points.

By Mr. Burchmore:

The rate of $1.30 from Birmingham to Atlanta or a distance of 166 miles, shown by Exhibit No. 180, and that under

my scale the rate would be $1.40, is for the route of the Seaboard Air Line (Rec., 599).

I think there is a route of the L. & N. from Birmingham to Atlanta in connection with another road, at least it is available. The mileage by L. & N. in connection with the Western Railway of Alabama is 272 miles from Birmingham to Atlanta. If the L. & N. elected to handle that traffic from Birmingham to Atlanta over that route, as explained by Messrs. Doss, Crane and Chancellor, it is a competitive [fol. 229] situation that they might meet; that is, it would be allowed to take the short line route of the Seaboard of 166 miles, which means that although 272 miles under our proposed scale would make a rate of $1.67, still the carriers will be charged only $1.40 because that scale rate applies for the short line distance (Rec., 600).

I don't know that the L. & N. in connection with the Western of Alabama does haul considerable tonnage between those points under the $1.30 rate, that is, these commodities, including slag, but it is one of their available routes, and I think is used. Assuming that your figures, which you have taken from Exhibit No. 8 of 193 miles from Johnson City to Birmingham over the Central of Georgia, which charges less than the full scale rate, or $1.44 for that distance, to meet the competition of the short line rate of $1.08 for 97 miles from Montgomery to Birmingham, I think the situation you mention between Atlanta and Birmingham as between the shipper on the one hand and the L. & N. and Western of Alabama on the other, is a competitive situation, our line, as well as the other two lines, making up the longer road, should be permitted to meet (Rec., 601).

Respecting the situation of the Central of Georgia at Howard as compared with the Montgomery district to Birmingham, it is my opinion that that is a similar situation the traffic officials of lines involved should be permitted to meet in their best judgment provided a situation is not created that would violate the law contemplated under Section 3. Obviously, Mr. Burchmore, if a long route does not meet the rate of the short route on highly competitive traffic, it won't handle any of the traffic. It is equally obvious if the Central of Georgia's rate from Junction City to Bir- [fol. 230] mingham is 32¢ higher than the rate in effect from Montgomery to Birmingham and there is no leeway

given for the operation or application of those rates that there would not be any movement from Howard (Rec., 602).

I can think of nothing that would permit the road to get the business under such a difference in rates because there is a competitive situation at Birmingham that must be met by both carriers and producers. Of course it is true that there are some places on some traffic where terminal deliveries are furnished that a road can get a higher charge than a competing road without such terminals. I could express an opinion respecting the terminal deliveries at Atlanta that would affect these competitive situations but I would not want to do so with respect to the Central of Georgia situation that obtains in Atlanta.

By Mr. Watkins:

Q. Mr. Mascngill, in your Exhibit No. 176, Sheets 1, 2 and 3, these rates there generally apply except where other specific rates are approved by the Commission, do you have municipal rates in North Carolina?

A. On unwashed gravel, Mr. Watkins, as was explained by Mr. Doss on yesterday, which has a very limited application. Now, at the time of this hearing in November, 1921, the carriers in North Carolina had several rates which were less than their scale, and there was objection voiced, as is shown in the report and order of the North Carolina Commission, which was also filed by Mr. Doss (Rec., 603).

Q. I am merely asking you for the fact, not the argument, it is the fact that there remains in North Carolina rates now less than the scales that you have set up in this exhibit?

A. So far as our company is concerned, I don't know of but three applications.

[fol. 231] It is our position that there should be one level of rates on all these road building commodities. I think the principal intrastate movement of commodities here involved, so far as our line is concerned, is on crushed stone in the northern section of Georgia and sand in the southern section (Rec., 604).

I cannot say whether our revenue was increased or decreased as a result of the Georgia intrastate revision, hav-

ing no figures, I make no claim that the operation of the Georgia revision diminished our revenue within Georgia upon intrastate movements. I expressed my opinion that it was wrong (Rec., 605).

Q. Now, in the determination of the carriers as to the elements properly, according to their view, entering into the measurement of their so-called proposed scale here, was thought given as to the elimination of the so-called municipal rates in various states where they exist?

A. Mr. Cotterill, I think the answer that Mr. Doss gave to you to substantially the same question is the best answer that I could give.

Q. Well, his answer, if I correctly recall it, was that so far as concerned his line, no thought was given to the question.

A. Well, I think that was what largely influenced traffic managers of the other trunk lines in Georgia. We were called upon, as I recall it, in response to citations from both the State Commissions of Georgia and Alabama to submit a schedule of rates, to revise the entire rate structure in both of the states, on classes as well as commodities, and this group of rates was submitted by the carriers' committee to the Georgia Commission under what is known as their Commodity Group No. 9. Now, I don't think that in [fol. 232] preparing these 40 or 50 commodity scales, as well as the class scales, that they gave to this proposed scale here the minute examination that your question would infer as did here; in other words, there was such a mass of it that this represents their best judgment as to what a reasonable maximum scale on these commodities would be both in the states of Georgia and Alabama, it has likewise been submitted to the North Carolina Commission and to the South Carolina Commission.

I have no knowledge that such scale would or would not be applied as a substitute for lower rates in the southern states for municipal application in determining our best judgment.

Q. Well, if that never was taken into account in the formulation of your scale, are you in a position to say whether the scale now proposed by the carriers is to be taken as a substitute for such municipal scales intrastate or not, so that we may determine for ourselves and that the Commis-

sion may determine its reasonableness in the light of that circumstance?

A. Well, your question is based on an assumption, I have expressed the opinion that I was not in a position to properly give you the reasons why the traffic officers members of this Committee submitted these figures (Rec., 607).

I am not in a position to state what the Seaboard proposed to do as to the municipal rates. I think that the 140% increase in tonnage of these products originating on our line from 1922 to 1925 is attributable to the intensive highway construction in substantially all of the five principal southern states (Rec., 608).

I believe it is a fact that the present basis of rates on the present Georgia scale are applied as minimum rates between points in Georgia and that the scale now proposed to the Commission in the Thirteenth Section Case is a max-
[fol. 233] imum scale, so far as the Seaboard is concerned. I don't know that the municipal rates authorized by the Florida legislature were permissive or mandatory, but think it was permissive; I think I stated that in years gone by the carriers deemed it to their interest to help build up that state. We don't have municipal rates in Georgia (Rec., 609).

I understand they are prescribed by the Georgia Commission as reasonable maximum rates. As to the tonnage from Ladd's to Atlanta, I don't have my figures, except only the loading at Ladd's for October, which was 99 cars, with an average loading of 99,560 pounds,—close to 50 tons. The rate from Ladd's to Atlanta was increased under the Georgia revision from 68¢ to 90¢, or approximately $10 to $12 a car increase at that loading. Whatever movement there is from Oglesby to Atlanta is from an operation there by the Georgia Highway Commission, but it would not have any effect on rates as they would be charged the same as the people at Ladd's (Rec., 610).

Whatever movement there is at Oglesby, we get it being local to our line. The market for the sand at Everett was Jacksonville, Florida, according to October loadings; there was none to Savannah. We handle a considerable tonnage of slag from Birmingham to Atlanta and the rate was increased under the Georgia revision of August 1, 1925, from $1.02 to $1.30 (Rec., 611).

I can't say whether that covers the effect of the Georgia revision as to increasing or decreasing our revenues for I have no information regarding revenue results. There has been an increase in revenue because we are operating this scale as a minimum scale today so far as I know. You understand I am talking about intrastate business in Georgia (Rec., 612).

[fol. 234] As I have said, there have been three departures from North Carolina scale in North Carolina, but we have not yet been allowed to go up to the scale due to the substitute compromise, as I understand it. Under those three exceptions, there is a spasmodic movement from Lylesville to Charlotte, only where the gravel produced within trucking distance of Charlotte cannot supply the demand; and from points on a line that is in the hands of receivers at this time, the North Carolina Commission maintains a rate made effective during Federal control, which is now substantially the same as the Trunk Line single line scale applied over that line and the Seaboard; and also in one other instance, from Creston to Durham, N. C., on crushed stone, where the contractor has warrant for sewerage and water works (Rec. 613).

I don't know, and have not heard, that there has been a decrease in the movement of slag from Birmingham to Atlanta by reason of the increased rates effective August 1st.

Redirect examination.

By Mr. Gwathmey:

The rates in effect prior to April 1, 1925, were the intrastate rates fixed by the Georgia Public Service Commission in 1915, and we hauled lots of traffic under them between the Elberton district to Atlanta, and Ladd's to Atlanta (Rec., 614).

The quarries as Oglesby were opened since then.

Yes, I have been with the Seaboard since 1902.

(Witness excused.)

[fol. 235] Roy Pope was thereupon called as a witness and, having been first duly sworn, testified as follows:

My name is Roy Pope, Assistant General Freight Agent of the Atlanta, Birmingham & Atlantic Railway, B. L.

Bugg, Receiver, headquarters, Atlanta, Ga. I have been in the employ of the A. B. & A. Railway since 1916, prior to June, 1920, I served in various capacities from executive rate clerk, chief rate clerk and chief clerk, and since June, 1920, I have been Assistant General Freight Agent in charge of rate adjustments on that line. I am fairly familiar with the rates on sand and other commodities involved in these proceedings as they apply on our line.

Mr. Commissioner, and Mr. Examiner, pursuant to the plan of shortened procedure, I will endeavor to follow that, although it may be necessary for me to make a general statement leading up to the presentation of my evidence. I may say that my evidence and testimony will be addressed principally to the issue involved in Docket No. 17689, covering the reasonableness of the rate of 79 cents per ton on sand from Junction City District to Birmingham, Ala.

I wish to present subject to such objections as may be interposed, if any, at this time Exhibits 182 to 196 inclusive.

Exam. Waters: The exhibits will be received and made a part of the record, unless there is objection.

The first exhibit is a map. I may explain that I did not make the same distribution of this map as I have of the exhibits, it is simply a map of the Southeast, and most of the railroads have the advantage of similar maps, and I judge also the parties interested in these proceedings.

(The map was thereupon received in evidence, marked "Defendant's Exhibit No. 182, Witness Pope.")

[fol. 236] It will be observed from the map, which shows the geographical location of the A. B. & A. Railway, that we are primarily an east and west line, having terminal points at Atlanta and Birmingham on the west end, and Brunswick and Thomasville on the east end. I wish to explain briefly the nature of our traffic and operating conditions in connection therewith. Our traffic eastbound from Atlanta and north consists primarily of merchandise, packing house products, grain and grain products, manufactured products and various other commodities that move largely in closed equipment. Our traffic from points west of Birmingham is of a similar nature, but the preponderant movement is through the Atlanta gateway. Our traffic from

Birmingham is by the very nature of the production of commodities in that district, largely of a character that move in open top equipment, such as for example, coal, one of our principal commodities moving in open top equipment, pig iron, iron and steel rails, cast iron pipe and structural iron of various kinds. Our traffic from Atlanta proper is largely of a character moving in closed equipment. Our traffic from the South Georgia territory consists principally of lumber, peanuts, fruits and vegetables, naval stores, and cotton factory products and cotton, most of which requires closed equipment in transportation. Our cotton traffic moves principally to the Carolina Territory and to the ports, South Atlantic Ports and east, and that that moves to the Carolina territory moves via Atlanta rather than via Birmingham. The principal movement of our lumber is eastward through Atlanta.

I mention this, Mr. Commissioner and Mr. Examiner, to show what I am leading up to, that the transportation obtaining in connection with the movement of traffic to Birmingham, which includes sand from the Junction City District, is of little consequence in open top equipment; there [fol. 237] is some movement of traffic to Birmingham and through Birmingham westward in closed equipment (Rec., 617).

Therefore, as we have a preponderant movement eastbound from Birmingham to the South Georgia Territory and Florida of traffic that is suitable for transportation in open top equipment, we necessarily have a return movement of open top equipment to Birmingham and Birmingham District points, which does not obtain as to the movement of empty returned equipment to Atlanta and Through Atlanta.

As illustrating this feature further, I wish to refer to my Exhibit No. 183, which shows the total number of trains operated during the month of July, 1925, and the month of January, 1926, to Birmingham and from Birmingham.

(The statement was thereupon received in evidence, Marked "Defendant's Exhibit No. 183, Witness Pope.")

It will be observed that we had a total number of trains to Birmingham shown under the column "Received," of 92, with a total number of loaded cars of 560, an average

of 6 loaded cars per train to Birmingham. I may explain here that our operating department advises me that our trains to Birmingham generally run as many as twenty or more cars per train, so it will be observed that most of the cars in such trains to Birmingham are empty, and as I have explained, they consist primarily of the open top equipment, including returned coal equipment (Rec., 618).

It will be noted from the same statement that during the same period, July, 1925, we had 92 trains from Birmingham, containing 1,357 cars, or 15 cars per train. And the exhibit is self-explanatory as to January, it rather indicates that the two months are representative of the situation which the exhibit purports to show.

[fol. 238] Yes, sir, it is limited freight trains, and I might explain there that it is necessary in order to take care of the per tonnage eastbound from Birmingham and district and from points beyond Birmingham, for us to move power and crews to Birmingham, we must get the power there and the crews there in order to take care of the traffic offering eastbound, which as shown by this statement, consists more of loaded equipment than empty, the reverse of the situation westbound. We operate two schedule trains a day, through trains to Birmingham and from Birmingham, so it is necessary that this train operate in both directions.

As further illustrating the dissimilarity between the operating situation obtaining in connection with the movement of traffic to Birmingham through Birmingham and from Birmingham and beyond, I refer to my exhibit No. 184, which shows similar information as to trains operated to and from Atlanta for the same months. It is only proper to explain in connection with the July movement of 1925, that the great disparity between the received and forwarded for that month as compared with January, 1926, is attributable to the fact that during July we have a large movement of peaches and watermelons; so that January is more representative, and indicates a substantial, in fact an exact parity as to the number of trains operated out of Atlanta, the number of cars per train, and the number of trains operated to Atlanta and the number of cars per train.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 184, Witness Pope.")

My Exhibit No. 185 shows the present rate on sand from Greenfield, Ga. and Junction City, Ga., which are the two principal shipping points on our line, to Birmingham, Bes-
[fol. 239] semer and Woodward, and the revenue per car mile based upon 50 tons per car, contrasted with the average revenue per car mile on all freight traffic handled by the A. B. & A. Railway during the calendar year of 1924.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 185, Witness Pope.")

This exhibit shows clearly I think that the A. B. & A. Railway's handling of sand from those two points to Birmingham, Bessemer and Woodward on the basis of a rate of 79 and 80 cents, as shown, does not necessarily throw a burden upon other traffic (Rec., 620).

I will later show that it contributes to relieving the burden on other traffic. It should be explained, Mr. Commissioner, and Mr. Examiner, that from Junction City our distance to Birmingham is 223 miles, and the distance via the Central of Georgia is 197 I believe, our distance being greater, we have Fourth Section relief to meet their rates under the theory of circuity, on the theory of circuity, under Fourth Section Order No. 3700, at Junction City, at Greenfield we carry a rate of 80 cents, which we are permitted to do, and the reason for carrying 80 cents is to not have a rate to a point beyond the border of the Georgia State Line lower than to the first point at the border, Abbottsford, Ga., to which point the rate under the Georgia Commission's order is 80 cents. Likewise we are permitted to carry the 80 cents from Junction City and Greenfield to Bessemer and Woodward, which points the Central of Georgia does not reach.

We observe the same rate to all of the intermediate points including Talledega, between Birmingham and the Georgia State line, Abbotsford, Ga., is 80¢, and that rate is carried all the way through to the terminal at Birmingham, including all intermediate points (Rec., 621).

[fol. 240] My exhibit No. 186 shows the traffic density comparisons of the A. B. & A. and other trunk lines serving the same southern territory, from which it will be ob-

served our traffic density is much less than that of the other trunk lines in our territory.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 186, Witness Pope.")

I may explain further that that is occasioned by the fact that we are a comparatively new line, perhaps you have discovered that in your investigations in connection with valuation, and the local territory has not developed agriculturally and industrially to the same degree as naturally may obtain on the older lines, so our traffic density reflects that condition, and what we need more than anything else is more traffic, more revenue traffic.

In this connection, my Exhibit No. 187 shows that if the shippers of sand at Junction City and Greenfield and that district on the A. B. & A. Railway should be excluded from the Birmingham market by the establishment of a differential adjustment of rates or higher rates from those points than from Montgomery, what it would mean to the A. B. & A. Railway in loss of revenue.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 187, Witness Pope") (Rec. 622).

I show here the approximate number of cars shipped per year as a thousand, that is closely correct, and I have shown the tonnage at 50 tons per car, I have shown that the loss to our line on the basis of the 79 cents rate applied to that tonnage would be $39,500.00 per year, and if we should assume that the rate from Montgomery to Birmingham should be revised to the scale, proposed in this proceeding by the carriers, which would result in a rate of $1.08, and then assuming we should continue the parity from Junction City [fol. 241] with Montgomery on the $1.08 basis, our loss on that proposition would be $54,000.00 per year.

I have said that if by virtue of this proceeding or later, the rate from Montgomery to Birmingham should be readjusted and made $1.08 to reflect the carriers' proposed scale, and then assuming that we should continue the parity between Junction City and Greenfield on the one hand with Montgomery on the other to Birmingham, and therefore have a rate of $1.08, our loss on that business would be

$54,000.00 per year, if we were not permitted to meet the $1.08 rate; assuming that the rate from Junction City should be made higher than from Montgomery, and thereby preclude the Junction City shippers from entering the Birmingham market.

My Exhibit No. 188 contains excerpts from decisions of the Interstate Commerce Commission, regarding the economical transportation of a given commodity and the traffic needs of the carrier, in justification of low rates (Rec. 623).

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 188, Witness Pope.")

I have shown by previous statements that our traffic density is low, and that we need more traffic, revenue paying traffic, and this exhibit, the purpose of it is to show that the Commission has sustained in principle the propriety of a carrier making a lower rate where empty cars are utilized; it also shows that where by handling the traffic on a low competitive rate if the carrier handling can derive something above the cost, that it may properly do so, and that it may contribute to relieving the burden on other traffic, rather than in increasing the burden.

My Exhibit No. 189 is submitted in connection with the testimony of Mr. Brown at Junction City and Mr. Moore [fol. 242] at Junction City, shippers of sand, who testified that they had substantial investments in their property and the facility for operating their sand pits, and that their investments were made at a time when a parity of rates existed between the rates from the Junction City district to Birmingham with the rates from Montgomery to the Birmingham district.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 189, Witness Pope") (Rec. 624).

This exhibit shows the expressions of the Commission sustaining the propriety of the consideration of such expenses as one factor at least in arriving at a conclusion in a proceeding of this kind.

My Exhibit No. 190 is submitted to indicate that the A. B. & A. Railway is efficiently managed

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 190, Witness Pope.")

It shows that our train mile cost is comparable and even less than that of the other lines in the same territory. This gets us back again to the point of traffic density. While our train mile costs may be the same as or lower than the other lines, our failure to have traffic density and tonnage to fill out those trains results in a difficult operation when it comes to the final result in the way of traffic income.

This is illustrated by my Exhibit No. 191, which shows our operating results and income for the years 1921 to 1924 inclusive. It is self-explanatory.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 191, Witness Pope.") (Rec. 625).

[fol. 243] I do wish to call particular attention to the 1924 figure there, showing that we have a remainder of $45,669.00 after paying operating expenses and the other deductions shown, which are according to the Classification of reports required by your Commission and submitted to you, whereas if we should be cut out of the movement of sand, as illustrated by my Exhibit No. 187, our loss on the 79 cents rate basis would be $39,500.00, and on the $1.08 rate basis, $54,000.00; in other words, the result there would be, if applied to the year 1924, to wipe out the remainder there left to pay towards the interest on the funded debt of the company.

Commissioner Lewis: Well, now, in the valuation decision, we held that the government was not underwriting any unprofitable or improvident investments; now, to take that very theory in this case, is the whole adjustment of rates in this territory to be hinged on this financial showing of a road which does not seem to be in very affluent circumstances.

Mr. Pope: Is that a question?

Commissioner Lewis: That would lead to a conclusion, I don't know.

Mr. Pope: I would like to answer it any way, if I may; to the best of my ability. We are not seeking here special consideration based solely upon our financial condition. As

to the question of the propriety of our existence, I think that has been shown, that we do perform a needed transportation service in a territory that is dependent solely upon us for transportation (Rec. 626), and it is in the public interest that we not be deprived of traffic on which we devire a revenue somewhat in excess of cost, and which may be handled at a very economical transportation cost, [fol. 244] as I have illustrated that we can and do handle sand from Junction City to Birmingham. The point is that my submission of these statements as to our financial operation goes to the propriety of our continuing to earn a part of our living from this traffic that moves from Junction City to Birmingham at a very economical cost, and as my exhibits illustrate, we must get the cars over there, if we move them empty there is no very great difference between the loaded movement and the empty movement, and I wish to say there that does not move in trainload lots or necessitate special train service, but the movement has for years been in small lots of from two to three and may be five cars aday, it is not loaded at points of a congested terminal, and it can be switched into our trains at point of origin at an economical cost, and delivery made at Birmingham, Bessemer and Woodard at an economical cost, and if I may use the expression, it is almost all velvet to the A. B. & A. Railway.

My Exhibit No. 192 is submitted to show that it is not an exceptional situation for us to be permitted to carry the parity of rates from Junction City to Birmingham with the rates from Montgomery, notwithstanding the difference in distance (Rec. 627).

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 192, Witness Pope.")

It shows as to sand that the rates to Birmingham, the rate of 79 cents applies for distances from 97 up to 223 miles, and I might say that the distance from Greenfield is 225 miles, and that from LaGrange, Tenn., a distance of 236 miles, the rate is only 90 cents.

Now, I have shown on the same statement the present rates on pig iron to Atlanta, and I do not submit this as in any way suggesting that there should be any relationship whatever between the rates on pig iron on the one hand

and sand on the other, or as to the relationship between the rates on sand and coal, but it is to illustrate the point that [fol. 245] mileage does not always control on such commodities. It will be observed that the same rate applies on pig iron for a distance of 222 miles as for 102 miles. It will be observed that the same rate on coal to Atlanta applies for a distance of 288 miles as for 215 miles.

I now come to the question of what might be considered a correct relationship between the rates on sand from Junction City District to the Birmingham district, with the Montgomery District to Birmingham, and I submit Exhibit No. 193, which is an order of the Alabama Public Service Commission, showing that it was made as approving the compromise agreement made between the carriers' and the shippers' representatives.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 193, Witness Pope.")

Exhibit No. 194 shows that in a way the compromise adjustment contemplated, which specifically shows that the rate of 79 cents from the Junction City District to Birmingham was to be subject to the same absorption rule as continued on a parity with the Montgomery rate to Birmingham.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 194, Witness Pope.")

Exhibit No. 195 shows the occasion of the carriers feeling that a rehearing was proper, and that the first decision of the Commission suggesting or prescribing the rate of 60 cents from the Montgomery district to Birmingham was not proper.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 195, Witness Pope.")

Exhibit No. 196 shows the first decision of the Commission in the case referred to, in which they prescribed a rate of 60 cents, and as indicated, on rehearing withdrew the order.

[fol. 246] (The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 196, Witness Pope") (Rec., 629).

I submit those exhibits, not to indicate in any way that there was an agreement as to the measure of the rate or as to the reasonableness of the rate of 79 cents from Montgomery nor from the Junction City District, but rather to show, as it does, that there was a relationship recognized at that time between the two groups of shipping territory to a given destination market of the Birmingham District. I might say in conclusion that while my testimony is addressed to the situation in Docket No. 17689, I concur in the mileage scale as a maximum submitted by the Witness Doss for general application in the Southern Territory.

Cross-examination.

By Mr. Price:

We don't wish the rates from Johnson City to Birmingham disturbed until there is some revision made in Alabama; we would prefer, however, to see the rate from Montgomery to Birmingham made $1.08 (Rec., 630).

I do not understand that the Alabama intrastate rates are involved in this proceeding. I am fairly familiar with the revision which the Georgia Commission has had under way since the fall of 1921. I understood the Georgia Commission's order in the sand and gravel case was a part of that general revision, and that prior to its order the Georgia Commission made revision of class rates effective May 1, 1923, and since then has issued orders making revisions on many of the commodities (Rec., 631).

I have not made a complete analysis as to the effect of these revisions upon the earnings of the A. B. & A., but I know it did effect an increase in our revenue on sand [fol. 247] from the Junction City District to Atlanta, and we have a fairly substantial movement to Atlanta and points in the switching limits. I do not recall at the moment whether the result of the cotton seed adjustment increased or reduced our revenue in the aggregate. As I recall it, the scale proposed by the Georgia Commission on cotton seed was substantially the same as that proposed by the carriers.

I may further say that while the effect of your order on sand did increase our revenue to Atlanta and points in the switching limits, it effected reductions in the rates on sand

from Junction City to points north of Atlanta, at Tate, Ga., and Canton, to which points there has been some movement, although not in the same volume as to Atlanta. It also effected reductions in our rates from the Junction City District to the South Georgia Territory, the effect of it there is small, there is not a large movement of sand from Junction City to the South Georgia territory, so in revenue effect it was not much different (Rec., 632).

Based upon the preponderant tonnage to Atlanta, I should say that the total revenue affected resulted in an increase, but I may say that if your questions have to do with the Thirteenth Section proceedings here involved, that we did not subscribe to the first petition, or the petition filed by one of the other carriers, feeling that if was a little premature because we had not accomplished the revision contemplated and desired of our interstate rates; and I may refer here to the fact that the rates from Birmingham for example, to South Georgia territory on slag are on a higher basis than your scale would produce for the same distance, similarly the rates on gravel, and I judge to the extent that there may be a movement from the Montgomery District to the South Georgia Territory, they are on a higher level than your scale would produce, and similarly the rates on gravel and sand from Chattanooga to points in Georgia are on a higher level than [fol. 248] your scale would produce, and crushed stone or slate from points north of Atlanta on the Louisville & Nashville Railroad to South Georgia I believe are on a higher level than your scale would produce. The effect of your order as applied to such adjustments would, it seems to me, involve the Thirteenth Section (Rec., 633).

The A. B. & A. is a party to these competitive rates from Birmingham to Atlanta. I think the rate was increased; I don't know to what extent, but am willing to accept the statements already made on the record.

I cannot say whether the effect of the Georgia order increased any of the rates interstate in which the A. B. & A. was involved. To some extent there is a movement of coal to destinations on the A. B. & A. to mines other than those in Alabama, coal from Kentucky and Tennessee points being received by us at Atlanta. We return those coal cars empty as far as Atlanta unless we have tonnage that can be loaded in them (Rec., 634).

In some markets, sand is a tonnage suitable for loading in empty coal cars, but in others it is different; for example, my understanding is that sand when used for fertilizer filler, and there are a number of fertilizer plants at Atlanta, requires closed equipment, whereas to Birmingham the movement is not incident to the fertilizers received. To some extent we do transport sand produced on our line to Atlanta in empty coal cars. But let me say here that the preponderant movement of coal to destinations on our line, commercial coal aside from the fuel coal, is from the Alabama mines, in the first place as a general proposition the rates on coal from the Alabama mines to the South Georgia Territory are lower than from Ken-[fol. 249] tucky and Tennessee, and in the second place, we get all of our fuel coal from the Alabama mines, and we actually release daily as many as ten cars handling fuel coal from the Alabama mines to our coal chute points, such as Manchester, Oglethorpe, Westwood in the Fitzgerald District, and a slight movement to Brunswick, and the movement of commercial coal, even as contrasted with commercial coal from Kentucky and Tennessee with the movement from the Alabama mines to our territory, it is much less in proportion. We do not have the same degree of empty return of coal equipment to and through Atlanta as we do to and through Birmingham (Rec., 635).

To an extent there is a movement of returned empty coal cars from destinations on the A. B. & A. back to Atlanta in the direction of the mines from which those cars come. I might explain further there that those coal cars are not our own equipment and the sand moving to the Atlanta territory as a general proposition requires delivery not on our rails, which is different from the situation at Birmingham as a general rule, and naturally we want to get the coal cars, the few we move, returned by Atlanta as quickly to our connecting line as we can.

Our present charge from the producing points on our line in Georgia to Atlanta is 90 cents and to Birmingham 79 cents. The distance from Junction City to Atlanta is 104 miles (Rec., 636).

Those two movements on our line, one to Atlanta and the other to Birmingham, are under entirely different transportation circumstances, as I have already attempted to explain. Of my own knowledge, I do not know that the

L. & N. is a coal originating carrier in the Birmingham District, but from general observation believe it is. I [fol. 250] believe the L. & N. transports coal from the Birmingham district over its own line and southward from and to Montgomery into Southwest Alabama and into New Orleans. I believe the L. & N. has empty coal cars which have to be brought back over that same line through Montgomery to the Birmingham district (Rec., 637).

But I should say that we should not lose sight of the fact that the sand movement from Montgomery moves, according to the testimony of Mr. Roquemore, at the rate of 50 cars a day, I don't presume to know what the operating conditions are on the Louisville & Nashville Railroad, but I doubt if they have a supply of empty equipment adequate to take care of that movement of 50 cars of sand a day for one shipper, I don't know how many other cars are shipped by other shippers from the same general territory by their empty returned coal equipment; moreover, I don't know that they could utilize entirely their coal equipment in the movement of sand, and take it away from the movement of coal from their mines to destinations; in other words, I don't know, but it seems to me that they would have a considerable displacement of their coal equipment to adequately serve their coal mines if they should undertake to supply these coal cars returning for the movement of sand in every case.

I would not say that every car in which we transport sand from producing points on the A. B. & A. to Birmingham is an open car but I do say that the movement of empty cars to the Birmingham Territory is principally open equipment, being incident to the outbound movement of coal and the other products of the Birmingham District (Rec., 638).

[fol. 251] I testified that we wanted to continue a parity between the rates from the Junction City District to Birmingham and the rates from the Montgomery-Jackson's Lake District to Birmingham, because the circumstances warrant it. Prior to August 1, 1925, our rate from Junction City to Atlanta was 57¢, and at that time increased to 90¢ per ton.

Prior to August 1, the rate from Junction City to Atlanta, as compared with Junction City to Birmingham, was more on a parity one with the other, considering the

difference in mileage. It is 97 miles from Montgomery to Birmingham via the L. & N., the short line, for which they have a rate of 79¢ (Rec., 639).

Without the tariff before me, I can't say whether that 79¢ rate applies over routes other than L. & N. from Montgomery to Birmingham, but I do understand there are other routes available, for example, the Western Railway of Alabama to Selma and the Southern thence to Birmingham, and perhaps the Western Railway of Alabama to Opelika and the Central of Georgia to Birmingham. I don't know whether traffic so moves via those routes. I should be surprised to find that this 79 cent rate from Montgomery to Birmingham applies in connection with the A. B. & A. to Birmingham; I don't think it does; I know we would not want to handle any of the traffic.

(Witness excused (Rec., 640)).

F. G. Browder, Jr., was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am Assistant General Freight Agent of the Atlanta and West Point Railroad, the Western Railway of Alabama and the Georgia Railroad, first going with the At-
[fol. 252] lanta and West Point in 1902. The Western of Alabama and the Atlanta and West Point constitute the direct short route between Montgomery and Atlanta, the Western Railway extending to West Point, and the Atlanta and West Point thence to Atlanta, West Point being 88 miles from Montgomery. The shipment of sand and gravel constitutes an important tonnage to our line as illustrated by my Exhibit No. 197.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 197, Witness Browder") (Rec., 641).

Referring to this exhibit, it will be seen that it shows the traffic of all kinds originating in carloads on the Western Railway of Alabama and received by connections, and

also the L. C. L. traffic originated on that line and received by connections, these items being totalled. It shows also specifically the number of cars and the number of tons of gravel and sand and kindred articles originating with the Western Railway of Alabama, and the same for that which is received by connections.

It shows that in 1920, 38.2 per cent of all carload traffic originating on the Western Railway of Alabama consisted of sand, gravel, clay, stone, etc., that in 1921 about an equal proportion; in 1922, the proportion was 46.2 per cent of the total tonnage; in 1923 it was 64 per cent; in 1924 it was 71 per cent, nearly 71½; in 1925 it dropped back to 70.19 per cent.

70 per cent of the traffic originating on the line of the Western Railway of Alabama is composed of sand and gravel and similar commodities that are here involved, principally sand and gravel (Rec., 642).

[fol. 253] The interstate and intrastate rates on our lines on these commodities were revised in 1925, the interstate becoming effective August 1, and the intrastate effective April 1. That was for the Atlanta and West Point Railroad. When the rates for our line from Alabama into Georgia interstate were revised they were placed upon the single line mileage scale which we are proposing in this case.

As to the effect upon the tonnage handled by our lines by those rate changes, I may say that a summary of the movement of sand and gravel from the shipping points on the Western Railway of Alabama for the period January 1st, 1925, to November 30th, 1925, shows that for the first six months, the period January 1st to July 31st, increased, the period during which the low rates were in effect, we moved from Arrowhead, Ala., a station 12 miles east of Montgomery, approximately 64,000 tons to destinations in Georgia; while during the period of 5 months following that, which began with the day on which the advanced rates took effect, namely August 1st, there were forwarded from the same point to destinations in Georgia only 5580 odd tons. During the first period of six months, the movement exceeded the second period of five months by approximately 58,400 tons.

During the first six months period, the intrastate rates between points in Georgia changed, they were fixed to be

the same as this order by the Georgia Commission effective April 1st; and from April 1st until July 31st, the Georgia rates were on the basis fixed by the Interstate Commission, and they continued to be on that basis during the second or five months period. A comparison of the movement of tonnage in these commodities from Montgomery, Ala., for the same period shows that for the first six months, dur-
[fol. 254] ing the existence of the low rates on these commodities from Montgomery to Georgia destinations we handled approximately 113,800 tons, while for the following period of five months after the rates had been advanced from Montgomery to Georgia destinations the movement was approximately 62,900 tons; the movement during the first period exceeded that of the second period by approximately 52,000 tons (Rec., 644).

Chehaw, which is another shipping point on the Western Railway of Alabama, and located about 39 miles east of Montgomery, shipped to Georgia destinations during the first period of six months approximately 8,290 tons; during the second period there moved only 94 tons, and I understand the pit is not now shipping at all.

The movement from Milstead, Ala., another shipping point on the Western Railway of Alabama, and 28 miles east of Montgomery, to Georgia points for the first or six months period, amounted to approximately 22,200 tons, and during the latter period approximately 13,600 tons, the difference being 8,550 tons.

Exam. Waters: I just want to get the purpose of it.

Mr. Gwathmey: I was about to have Mr. Browder explain that under the order of the Georgia Railroad Commission, Section 5 I believe it is, it became necessary to make a revision of the interstate rates following the intrastate revision that has been made in Georgia. This interstate revision was made effective August 1, 1925, as Mr. Browder has stated, and we are now undertaking to show how much the actual movement of this tonnage from Alabama into Georgia interstate fell off with the interstate rates on the advanced level and the intrastate rates in Georgia on the level of the scale as prescribed by the Georgia Commission in 1925, about which we are complaining in our Thirteenth Section Petition (Rec., 645).

[fol. 255] Mr. Burchmore: You say that was the effect of these rates, Mr. Gwathmey?

Mr. Gwathmey: Did I say what?

Mr. Burchmore: That this tonnage, the falling off of the tonnage was due to this change in rates?

Mr. Gwathmey: Well, we think that the change in rates certainly must have had something to do with it, because it was so very marked, and we are undertaking to show here, just as was shown in the case of the C. & W. C. Railway, how the application of this intrastate rate scale in Georgia has affected and reduced the interstate movement of the traffic.

Mr. Burchmore: Well, if you don't mind my calling your attention to something, isn't it a fact that your proposed scales will put his interstate rates still more out of line with the state, and still have the effect you are now illustrating?

Mr. Gwathmey: Mr. Browder stated a moment ago, if I correctly understood him, that his present rates interstate from Alabama into Georgia are now on the basis which the carriers are advocating here (Rec., 646).

The Atlanta and West Point and the Western Railway of Alabama have the only direct line from Montgomery to Atlanta; they have no branch lines. Prior to August 1, 1925, the rates on our line from Alabama points to Atlanta and oher Georgia Territory were materially lower than those established August 1, 1925. These low rates were established from Alabama into Georgia when the gravel pits along the Western Railway of Alabama were first established and shipments begun. Atlanta was sought as a market for part of the output and an investigation showed that sand was being brought to Atlanta from points on the Southern Railway between Atlanta and Columbus, Ga., at 30¢ per ton. It was necessary to make a very low rate from points on the Western Railway of Alabama to enable them to compete and for us to transport this sand to Atlanta (Rec., 647).

[fol. 256] When it came to gravel we found that other commodities competed, for example, broken stone, and broken stone was brought to Atlanta from points on the Georgia Railroad within 16 miles of Atlanta, and broken stone was produced right in the county; hence it was necessary to make very low rates to Atlanta from the pits on the Western Railway of Alabama. The market competition and competition of materials created low rates.

Cross-examination.

By Mr. Cotterill:

I have not examined the record as to the tonnage moved from pits on the Western to Georgia in 1925, so can't say that approximately 300,000 tons of a total of 833,000 tons originated by the Western (Rec., 648).

I have made no analysis of the movement for 1924. I have not compared them, but if I indicated that during the last five months of 1925 the movement of tonnage originating on our line to Georgia destinations fell off 50% as compared with the previous six months of 1925, it is true that the total tonnage originating on our line in 1925 was 10.75% greater than 1924 (Rec., 649).

I have not examined or analyzed the tonnage but in my opinion the tonnage in 1924 was probably a greater proportion to Georgia than in 1925 (Rec., 650).

There was a changed relationship to the Atlanta market in the revision of 1925, which caused the increases in cents per ton from the Alabama producing points to be greater than from the Georgia producing points. That is, the revisions which took place in the intrastate rates in Georgia and the interstate rates from Alabama to Georgia let us to increase the differ-tial that existed between those systems of rates prior to August 1, 1925, particularly at points on the Atlanta and West Point Railroad.

[fol. 257] I can't answer your question as to whether this loss of tonnage to Georgia is due to the widening of differentials, if we assume that the consuming demand in Georgia, particularly Atlanta, was unaffected by the fact that all rates to Atlanta were increased (Rec., 651).

In tendering this showing, I read these figures to mean that if the same basis of rates were used, mileage considered, in fixing rates between Georgia points as in fixing rates from Alabama points to Georgia points, that there would be greater opportunity to the interstate shipper to compete with the Georgia shipper for Georgia business (Rec., 652).

We never put them on the same mileage basis; our basis is higher than the basis established between points in Georgia.

Q. Well, now, let me ask, approximately of that tonnage originating on your line and moving to Georgia, what proportion is accounted for by the movements to Atlanta?

A. From Chehaw, Ala., the movement during the first six months was approximately 8,300 tons; 32 tons of that moved to Clayton, Ga., 788 tons to Anstell, Ga., 61 tons to Winder, Ga., and the rest of it moved to Atlanta and Atlanta group points or to points within the switching limits of Atlanta. During the second period, after August 1st, the 94 tons which moved, moved to Atlanta, none moved to any other points. And during the first period, the movement from Milstead was made up of approximately 7,500 tons to Atlanta, 120 tons to destinations not in the Atlanta Group, 4,000 tons to College Park, a point practically in the Atlanta group, 280 tons to Decatur, in the Atlanta group, approximately 4,800 tons to East Point in the Atlanta group, 80 tons to Hamilton, not in the Atlanta group, [fol. 258] 200 tons to Kingsberry, not in the Atlanta group, 40 tons to Lakemont, not in the Atlanta group, 47 tons to Thomaston, not in the Atlanta group, and 400 tons to Wallace Siding, not in the Atlanta group. During the second period——

Q. I wonder, Mr. Browder, instead of reading those totals in the record, can you examine your data and give just an outside approximation of the relative movement to Atlanta as compared to the movement to other points in Georgia on your line?

A. I would very much prefer to compile and file, if the Examiner will permit me, a statement showing the exact movement and the proportions of that movement to Atlanta and Atlanta group points, including the points on the Western of Alabama where the Atlanta rate was forced as low by the Fourth Section requirement, where the rate was made as low as the Atlanta rate by the Fourth Section requirement, and give you the exact figures, then the Commission may know exactly what effect this had; if that will prove it.

(Permission given to file exhibit tomorrow.) (Rec., 654.)

By Mr. Cotterill:

Q. Did I understand you to say, Mr. Browder, that in your thought the widening of the spreads to Atlanta as

between the Alabama producers and Georgia producers in the August revision created an opportunity for the Alabama producers more successfully to compete than theretofore in the Atlanta market?

A. If you did, you are the only man that drew any such conclusion from my remarks, I think it is quite clear that everybody else understood me to say just the reverse. We did not put the interstate shippers on a scale as low as that which the Georgia Commission fixed for the intrastate shippers. I am speaking of Atlanta and other places (Rec., 655).

[fol. 259] Mr. Burchmore: Can't we have the figures on that?

Mr. Cotterill: The figures have been put in the record. What you intended to convey was that the figures published in Georgia on this traffic were on the interstate mileage scale?

Mr. Burchmore: Yes.

Exam. Waters: Ask Mr. Browder the question.

Mr. Browder: I would rather get the figures than to give my opinion.

Exam. Waters: That will be shown up on your Exhibit?

Mr. Browder: I will do it, I didn't do it because it was a duplication, I was preparing to do that, but when I was asked not to duplicate anything that somebody else had put in, I left it out.

The Western Railway of Alabama, the Atlanta & West Point Railway and the Georgia Railroad feel that it would be right and proper to adopt a maximum mileage scale for the construction of rates on the commodities here being considered, giving the carrier the privilege to depart from that mileage scale downward when it found conditions requiring it, and to do so would not unjustly discriminate in its treatment of its various patrons (Rec., 656).

I made the positive statement that was the policy of those three companies, and it was their request of this Commission to so fix the standard for making rates on these commodities.

The differentials to Atlanta are invariably greater than the distances to Atlanta from some of the important pro-

ducing points in Georgia for our principal Alabama producers seeking the Atlanta market.

Q. Well, then, from some of the important producing points in Georgia under a uniform application of the single mileage scale, the charge to Atlanta, Ga., from such producing points in Georgia would in fact be less than from the producing points on your line in Alabama to Atlanta?

A. Not if the distance from the producing points on our line were less than from these other points to Atlanta (Rec., 657).

[fol. 260] If we had a mileage scale the rates will be less from the shorter distant points in some instances (Rec., 657).

I cannot answer that we desire to make rates to Atlanta, Ga., from producing points on our line on these products lower than the mileage scale so as to overcome the differences in rates between our Alabama producers and some of the Georgia producers in the Atlanta market, because we have not yet seen the effect of the application of the uniform scale from all shipping points to Atlanta. We might not find it either necessary or desirable to make a change. We might find the shippers on the Western Railway would get a fair share of the competitive business from Atlanta and other Georgia points. The interstate parties, the shippers and the carriers, shall judge as to what shall be the fair share of the Montgomery producers of the consumption in Atlanta. Our lines have always felt that their interests were interwoven with those of their patrons. If the shipper of sand and gravel on the line of the Western Railway can find no market for his product, the Western will have no tonnage in that class of traffic and will derive no revenue (Rec., 658).

By the figures I gave, we have already found that the revision made in August decreased the consumption in Georgia of Alabama products.

Q. Now, this maximum mileage scale of the carriers I am told would still further widen the spreads as between the Alabama producing points and some of the important Georgia producing points into the Atlanta market.

Mr. Gwathmey: That is one of the very issues in the case, we are asking the Commission here to remove that spread entirely under the Thirteenth Section petition.

[fol. 261] Mr. Cotterill: I might explain that as to this particular instance, which is of quite vital consequence to my clients, I was attempting to test out now in this one case just what is the true situation of this asserted reservation of right on the part of the carriers to depart from the mileage scale; I want to find out if I can by competent examination if the situation to be faced by my clients is that in the case of Birmingham, their second largest market, producers in Georgia are to have a rate parity with them, although their distance is greater than from Alabama to Birmingham, but that when we take the other direction, and take Atlanta as the chief individual market, the disadvantage of distance suffered by my clients is not to be overcome as compared with the same Georgia producers (Rec., 659). I am trying if I can to determine whether or not in sum and substance this asserted reservation carriers us back to the point where the shippers are left to their individual negotiations with individual carriers and get what they can, and go without what they cannot, or is there to be some definite rule according to which a man can tell in advance whether he is entitled to a departure from the mileage scale or not.

Mr. Gwathmey: I object to any more argument at this time.

Mr. Burchmore: I would like to answer that.

Mr. Cotterill: I was trying to test out the significance of this reservation of right, I want to find out if it is to be covered by some general rule, or does it mean some shipper must take the chances?

Mr. Burchmore: I would like to find out whether the Commission has a right to condemn rates without a hearing, you understand the Commission has that right, Mr. Browder?

Mr. Browder: I would not like to set myself up as suffi-
[fol. 262] ciently acquainted with the law.

Exam. Waters: We understand the position of Mr. Cotterill very thoroughly I think, of course what the carriers have stated here almost universally, they want to be permitted to depart from the scale when they see fit to do so without violating the act; how far that is going to go will be for the Commission to say, but would you propose to put in a rate lower than the mileage scale that would not be compensatory (Rec., 660)?

Mr. Browder: No, s.., I would not undertake at any time to establish a rate which would result in the loss of net revenue if a volume of tonnage moved on that rate, and I might answer this question he has asked.

Mr. Gwathmey: That is just argument.

Mr. Browder: We can't tell prior to the result of operation of scales of rates what that result will be, that is an impossibility, you might as well ask a doctor what he is going to prescribe for a patient before he got to the patient.

I think a mileage scale should be prescribed in this case because that is the only proper basis for a general revision of rates on any commodity.

Q. But don't you also think, if there is a continuous breaking in on that scale, how long do you think it is going to last?

A. You asked me how long I thought it was going to last, I can answer that, if the law is complied with and intelligence is used in departing from the scale, it will last forever, if the scale is just, fair and reasonable it will be permanent.

By Mr. Burchmore:

Q. How long do you think a mileage scale would last that any departures therefrom would not be permitted (Rec. 661)?

[fol. 263] A. I don't know, but it wouldn't last as long, it wouldn't answer as good a purpose as the one which was flexible.

Exam. Waters: The question I am driving at is whether or not a mileage scale is the thing in this case; I have some doubt about it after hearing all this testimony.

Mr. Burchmore: I would like to argue that at the proper time.

Mr. Cotterill: Counsel seems to prefer that Mr. Browder not answer my question, therefore I don't press it, because it seems to be the fact that it borders on the domain of argument, but in reality I was only trying to find out whether these exceptions are to be covered by some definite rule, if that be the proposal of the carriers, or whether or not it is left to simply the generosity and self-interest and persuasiveness of individual carriers.

Mr. Walker: Don't you know that that same custom and practice has governed ever since there has been a railroad in this country?

Mr. Cotterill: It used to.

Mr. Walker: I don't think we have reached the point yet where the Commission is going to fix a strict mileage scale and allow no one to depart from it.

Exam. Waters: Of course, there is a point beyond which, I think it is self-evident that a shipper of sand cannot go at a reasonable rate to destinations, there are certain destinations in this territory, of course to which he cannot reach (Rec., 662).

Mr. Browder: There are certain differences in rates to a given point of destination which are so great that the man with the higher of the two being compared cannot do business successfully.

[fol. 264] By Exam. Waters:

Q. In other words, you cannot overcome or overlook in this case entirely geographical advantages, can you?

A. You cannot.

Q. Is it, even assuming a mileage scale was put in as suggested by the carriers, is it their intention to try to overcome that altogether?

A. No, sir, not by any means, I think I tried to make it clear, and I think I did, when I said that if intelligently used in departing from this scale and the law was complied with, we couldn't hurt anything or anybody or ourselves, the scale would not be hurt itself.

It is the purpose of the Western Railway of Alabama and the Atlanta & West Point Railroad in using the scales which we have asked the Commission to approve, to use the single and not the joint line scale or joint haul scale in fixing rates from points on the Western of Alabama to points on the Atlanta & West Point Railroad, and if I may be allowed to do so, I would like to state my reasons for that (Rec., 663).

The Interstate Commerce Commission has in several instances stated that these two lines must use the single line scales which it has fixed where it has fixed differing scales for single line and joint haul service; for instance, the

Livestock Case is one with which the Examiner doubtless is familiar, and these companies have decided not to raise that question with the Commission in the sand and gravel and stone, etc., rate hearing.

Our lines handle sand and gravel from Montgomery to Atlanta in open equipment, not altogether in returning empty coal cars. The movement of commercial and domestic coal to points on the Atlanta & West Point and the Western Railway is largely from the Alabama coal fields (Rec., 664).

[fol. 265] We get a large part of it from Opelika. That equipment is returned sometimes loaded and sometimes empty. Sometimes we have occasion to utilize returning empty coal equipment in handling sand and gravel from Montgomery to Atlanta. I think that under a normal movement of sand and gravel from Montgomery, Ala., to Atlanta, Ga., and Atlanta Group points, and when I say Montgomery I mean the other points of origin on the Western of Alabama, that a small part only of our equipment would be coal cars which had been brought into Montgomery via Atlanta loaded with coal and were being returned empty from Montgomery via Atlanta to the points of origin from which the coal came. I can't say whether in returning empty coal equipment to our connections at Montgomery or Selma, which had been loaded originally to Atlanta or beyond, the movement would be empty in the opposite direction of the movement or our sand and gravel from Montgomery to Atlanta (Rec., 665).

Those cars might be used up to Chicasaw Bluff, with loads, and then brought on to the main line and carried on to Opelika empty from there, I am not familiar with the method of providing cars for that movement, and I can't answer your question, for I don't know. I endeavored to give you an answer *to* regard to your Atlanta question, and made it as nearly complete as I could, for I knew what you wanted to put into the record, and I was glad to give you the facts.

Of the total tonnage I gave for the period January 1 to July 31, 1925, for the movement from Montgomery, Arrowhead, Chehaw and Milstead, being 113,800 tons from Montgomery, 64,000 tons from Arrowhead, 8,290 tons from Chehaw, and 22,200 tons from Milstead, I don't think the move-

ments were handled in trainload lots; I mean by that I don't think we handled it in extra trains containing gravel cars only. I doubt seriously if we have had anything like that [fol. 266] much tonnage of coal (Rec., 666).

It is a fact that in handling sand and gravel from Montgomery to Atlanta we cannot as a general rule utilize empty returning coal equipment for such service, and therefore have the empty return of the sand and gravel equipment without a revenue therefrom. I am not familiar with the movement from Georgia to Birmingham. I am sorry I can't tell you the character of the open-top equipment which we have used in this traffic from Alabama to Georgia (Rec., 667).

I think we have acquired open-top equipment that was greater than our need would be for coal or commodities other than sand and gravel, and it follows that we acquired it just for the purpose of handling sand and gravel. I do not know whether my road frequently handled those loaded cars in trains consisting of nothing else during the period of the normal movement to the Atlanta market. I can't say that I am thoroughly familiar with the transportation characteristics of sand and gravel. My time has been devoted largely to trying to fix just, fair and reasonable rates for the transportation of those commodities, but we have never gotten them to the point where we are willing to regard them as just, fair and reasonable compensation (Rec., 668).

In my opinion, based upon my knowledge and experience in this business, I don't think that there are any differences which are material that would justify making a lower or higher scale for one commodity than for any of the other commodities here under consideration. I think you have drawn a wrong conclusion when you say that my statement showed that the preponderance of the movement of these commodities was to Atlanta. Mr. Cotterill referred to the fact that the preponderance of tonnage was not even to Georgia points (Rec., 669).

[fol. 267] Yes, sir, I am to furnish an exhibit and show what the proportion of the tonnage to Atlanta was of the total tonnage, as compared with the total tonnage to Atlanta. The difference in our rates effective August 1, regardless of tonnage, is also to be covered by a statement.

From Montgomery and other shipping points on the

Western Railway of Alabama to Atlanta and intermediate points on the Atlanta & West Point Railroad, the rates fixed by the Western Railway of Alabama for the transportation of sand were lower than those that they fixed for transportation of gravel, due to the fact that at Atlanta the market competition was much more severe in sand than it was in gravel and kindred articles. We could transport gravel to Atlanta successfully at a higher rate than we could obtain for transporting sand (Rec., 670).

Referring to my Exhibit No. 197, E reads clay gravel, sand and stone, it means straight clay, of which none originates on the Western of Alabama; it means gravel, whether that gravel be mixed with sand, or be mixed with clay, or be clean, clear, washed gravel; it means sand, whether the sand has some gravel or not. It means clay, and it means straight cars of clay, but none originated on the Western, nor did any stone originate with the Western.

(Witness excused.)

C. D. Bailey was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Bailey:

I am Assistant to the Traffic Manager of the American Short Line Railroad Association, Atlanta, Ga. I have been in the traffic departments for some fifteen years. The lines I represent are the so-called short lines, substantially those given special treatment by the Interstate Commerce Com-[fol. 268] mission in such dockets as No. 13494. As for the Georgia lines, I do not represent the Gainesville-Midland, Gainesville, Southwestern & Gulf or the South Georgia Railway (Rec., 671).

In an endeavor to shorten the testimony, I believe it has been agreed by the parties at interest that the short lines should be given special treatment, but feel it necessary that we submit a scale for their account. The scale submitted by the standard lines may be a just and reasonable scale on the commodities here involved for those lines, but gen-

erally speaking it is too low for the short or weak lines, as they traverse a sparsely settled section and their tonnage density is of necessity low, and further their financial condition is such that they must carry a higher level of rates. Then, too, these lines handle very little through or overhead traffic, some of them none, their principal source of revenue being on traffic which they either originate or deliver.

I file as my Exhibit No. 198 a statement of the financial condition of about 65 short lines in the Southeast for the year 1924.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 198, Witness Bailey.") (Rec., 672.)

A number of these lines shown on the statement however are not interested in these proceedings, but the statement will give a fair idea as to the general condition of the short lines in the territory involved. There are 19, of a total of 25, of the Georgia lines shown there. There are some short lines that are interested that are not shown.

Exam. Waters: Do you appear for those, Mr. Gwathmey?

Mr. Gwathmey: No, sir.

Exam. Waters: Who does?

[fol. 269] I don't know.

Mr. Bailey: I will file with you a little later, if I may be permitted, a complete list of those lines, about 25, that I represent, that is, Georgia lines.

By Exam. Waters:

Q. Have you filed your appearance?

A. Mr. Streyer filed it, but he was unable to be here.

Mr. Gwathmey: Mr. Streyer filed the petition, as you will recall, Mr. Examiner.

Exam. Waters: What I wanted was some complete statement of all the short lines that were involved in this proceeding, that is, the weak lines or Class 2 lines or the lines that are entitled to special treatment (Rec., 673).

Mr. Bailey: If you will indicate whether or not any lines in Mississippi should be filed, the Alabama and Georgia

lines of course are interested in it, but if you want those lines filed, I will be glad to file them with you.

Exam. Waters: I don't know, if you point out on the record which lines are claiming special treatment in this case.

Mr. Price: There are only eight of the short lines that are parties to this complaint.

Mr. Walker: The rest of them were brought in a little later.

Mr. Price: Under that general order issued by the Commission to show cause whether——

Mr. Bailey: That is why I made that statement.

Mr. Price: There is no direct complaint by any of the short lines except those eight that joined the Coast Line. [fol. 270] Mr. Burchmore: There is no order or anything else bringing in the Fernwood, Columbia & Gulf Railroad Company, is there?

Mr. Price: No, sir, that is not a Georgia line.

Mr. Burchmore: But they are on this exhibit.

Mr. Bailey: I will file with you in the morning a list of about 25 of those Georgia lines, without going into detail as to the financial condition of these short and weak lines, I respectfully refer you to the special treatment given them in Docket 13449, involving rates on lumber and forest products in Southern Territory; Docket 13494, involving class rates within Southern Territory; (Rec., 674) also I. & S. Docket 1885, involving brick and clay products within Southern Territory, the latter case being decided April 15th, 1924, and the Commission used the following language at Page 562: "We do not regard the full combination basis as warranted on this low grade commodity. We are of the opinion that for application to points on these short lines, a differential of 3 cents might properly be added to the proposed scale rates, to accrue alone to the short lines in addition to their divisions out of the joint rates."

In Docket 13494, the Commission used the following language: "Apparently, these short and weak lines are the object of general sympathy in the Southern Territory, and there is little disposition to question the fact that many of them need help of some sort, and most of them are surrounded by competitive influences either of other railroads

or of motor trucks, and their charges are limited by other factors than public regulations."

I file as my Exhibit No. 199, the mileage scale of rates for single line application and for joint line application over those short lines.

[fol. 271] (The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 199, Witness Bailey.") (Rec., 675.)

The single line scale to apply when the rate is made by the use of only one of these short line's mileage, and the joint line scale to apply when the rate is made by the use of two or more short lines on one or more short lines and one or more standard line's mileage. I might say this is the scale submitted to the Alabama and Georgia Commissions in 1921, reduced 10 per cent, and is to apply on all commodities here involved. It will be noted that this scale is only extended to and including 300 miles, the basis for which single line is 120 per cent of the single line rate submitted by the standard lines, the joint haul rates made based on 120 per cent of the single line rate submitted by the standard lines added to the differentials between the single line rates submitted by the standard lines and joint haul rates submitted by the standard lines. Should the Commission see fit to further extend these scales, I would suggest that the same basis be applied.

The mileage scale of rates that I have submitted is the maximum scale for application generally speaking over these short lines, but account of the peculiarity of this traffic, I desire here to state that a few of these short lines on which are located sand and gravel pits desire to carry a scale of rates nearer that of the standard lines' scale. It must be appreciated that the owners of pits located on these short lines must be given rates which will permit the operation of such pits, and in doing so, they will desire to place their operators on a parity with their competitors located on the rails of standard lines, and with a margin of profit sufficient to compensate the carrier for any absorption (Rec., 676).

[fol. 272] I ask the Commission in prescribing a scale for application on these short lines to do so by prescribing a maximum scale of rates sufficiently higher than that pre-

scribed for application over the standard lines so as to protect these carriers in general. If this is done, these short lines who have pits in operation on their lines will carry or desire to carry rates which will be remunerative to them, and permit continued shipments from their pits. It is stated by the Commission in Docket 13494; "Many of these lines are surrounded by competitive influences, and their charges are limited by other factors than public regulation." In other words, the volume of this traffic which a few of these lines receive from pits located on their lines, and there is only a few, may force them to carry the same or slightly higher, say 5 to 10 cents per ton, than the standard line scale. The operators of pits on these short lines must be able to meet the competition of their competitors. The various State Commissions over the South have granted to this class of carriers special treatment, their usual basis for rates in approximately 120 per cent of the rates prescribed for the standard line carriers (Rec., 677).

My Exhibit No. 198 is a general statement of lines in Southern Territory that generally speaking require Fourth Section relief which is generally granted by the Commission, and prepared for that purpose. It is a statement which our lines have made up for other purposes, and I have used it here simply because it was broad enough to include certain of the lines that are involved, but not necessarily as having any bearing whatever from the stand-
[fol. 273] point of lines over in the Mississippi Valley or up in Tennessee or through other parts of the South. Those lines that are not interested of course to be eliminated.

(Witness excused.)

R. A. CHADWICK was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Walker:

I am Commerce Agent for the Mobile & Ohio Railroad (Rec., 678), and have been engaged in the handling of

traffic matters in Southern Territory for almost 30 years, the past 10 with the M. & O. I am familiar with the issues in this case. I might say that I had nothing to do personally with, or in connection personally with the conferences which discussed and prepared this scale which has been submitted for general application. The scale was submitted to and approved by our company as being acceptable for general application on our line on both interstate and intrastate traffic. Now, I am personally familiar with the adjustment of rates in the state of Mississippi, I have had a great deal to do with those rates, and I am personally acquainted with them and with the history back of them.

The M. & O. has a line from Montgomery, Ala., which extends into Mississippi and has considerable mileage in Mississippi. The issue in these complaints in which the Mobile & Ohio Railroad is principally interested is the allegation that complainants, the communities of Chattanooga, Tenn., and Montgomery, Ala., and sand and gravel therefrom are subjected to undue and unreasonable prejudice and disadvantage in favor of intrastate shippers, and shipments of sand and gravel between points in the state of Mississippi (Rec., 679).

[fol. 274] The M. & O. Railroad does not reach Chattanooga, Tenn., but does reach Montgomery, Ala., with its own rails over its Montgomery Division, which extends from Artesia, Miss., on its main line to Montgomery, a distance of 181 miles. This extension from Artesia to Montgomery passes through Columbus, Miss., and crosses the Mississippi-Alabama state line about 24 miles east of Artesia. Montgomery is, therefore, about 157 miles from the Alabama-Mississippi State line via the M. & O. Railroad. The present Mississippi intrastate rates of the M. & O. Railroad on sand and gravel are lower than the rates in any state in the South and lower than any scales prescribed by this Commission. I do not mean to say that the M. & O. rate for every distance is lower than in any other state for the same distance, but taking our Mississippi scale as a whole that is true, and there are very few specific instances where that is not true.

The only sand and gravel pits on our line that are shipping in any substantial quantities are located at or within a few miles of Montgomery, Ala., and at or within a few

miles of Columbus, Miss. My investigation shows that there has been no movement from the Alabama pits referred to, to points in Mississippi via our line (Rec., 680).

The production of sand and gravel at and near Columbus, Miss., is very large. During the four months of April, June, August and October, 1925, the M. & O. Railroad handled from those pits to points in the State of Mississippi 1,934 carloads of gravel weighing 82,650 tons, an average of 42.74 tons per car, and 101 carloads of sand weighing 4,229 tons, the average being 41.87 tons. About 88 per cent of this tonnage of sand and gravel was for municipal roadbuilding. 65½ per cent of this tonnage was single line movement, that is, to points on the M. & O. Railroad, and 34½ per cent was joint line movement, that is, [fol. 275] to points on other lines. Of the single line movement the shortest haul was 5 miles and longest 125 miles. The average weighted haul was 63.8 miles. Of the joint haul movement the shortest haul was 25 miles, the longest haul 205 miles, and the average weighted haul 84.7 miles. The average weighted haul of the combined single and joint line movement was 71 miles.

Assuming that the four months named are representative of the yearly movement, (and they were selected by the Mississippi Railroad Commission and sand and gravel producers in Mississippi as being so), the total tonnage of sand and gravel shipped from pits in Mississippi on the M. & O. to points in Mississippi via the M. & O. Railroad was 260,000 tons in 1925. It will, therefore, be seen that our interest in the rates on sand and gravel in Mississippi is substantial. All of this traffic moves on the mileage scale prescribed by the Mississippi Railroad Commission. There is no joint line mileage scale on sand and gravel in Mississippi (Rec. 681). Rates on shipments moving over two or more lines are made on combination of proportional rates which are 10 per cent less than the local rates. However, under ruling of the Mississippi Railroad Commission, the M. & O., Southern and Columbia & Greenville Railway are considered as being under "one ownership, management or control," and are required to apply the single line scale on shipments moving over those lines.

As our interest is largely in the Mississippi rates, I want to give this Commission a history of those rates from 1912 to date.

I offer as my Exhibit No. 200 a series of statements which are numbered pages 1 to 11 inclusive. Page No. 1 is a chronological statement of the Mississippi intrastate rates of the Mobile & Ohio Railroad on sand and gravel, [fol. 276] carload, from September 4th, 1912, to date. In August, 1912, the Mississippi Railroad Commission issued its Order No. 2270, effective September 4th, 1912, prescribing a scale of rates on sand and gravel, carload, for application on all lines in Mississippi on intrastate traffic. Those rates are shown on my Exhibit under column headed September 4th, 1912.

Exam. Waters: The exhibit will be received and made a part of the record, if there is no objection (Rec., 682).

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 200, Witness Chadwick.")

The date, September 4, 1918, in the main heading on page 1, should read September 4, 1912.

While the Mobile & Ohio protested against those rates as being too low, nevertheless it published them under protest. The Illinois Central and Y. & M. V. Railroads considered the Commission's rates so low that they applied for and secured a restraining order from the court against the enforcement of those rates on their lines. While the court case was pending, conferences between officials of the Illinois Central and Y. & M. V. and the Mississippi Commissioners and other state officials, including the Governor and Attorney-General, were held for the purpose of reaching an agreement with respect to those rates, if possible. As a result of those conferences, it was agreed that if the I. C. and Y. & M. V. would withdraw its suit and put into effect a certain scale which I will later show, to be applied on gravel for municipal road-building, the Commission would withdraw its Order No. 2270 so far as it applied to the Illinois Central and Y. & M. V. Railroads. This scale was from 50 to 100 percent higher than the scale prescribed in its Order No. 2270 which remained in force against the other carriers (Rec., 683). [fol. 277] Moreover, the Illinois Central and Y. & M. V. were not required, under the new scale to make any reductions in their rates on gravel for any other than municipal

road building, nor on sand for any purpose which were much higher than the new rates on gravel for municipal roadbuilding, and still higher than the rates prescribed in Order 2270, which applied on sand and gravel for all purposes. I will show in another exhibit how those rates compared.

No further changes were made in these rates until May 1st, 1915, when the rates on sand were made as shown under Column headed "May 1st, 1915," by Order No. 4212 of the Mississippi Commission. The effect of that order was to substantially reduce the rates of the Illinois Central and Y. & M. V. because of the much higher rates they had been permitted to maintain previously, but it will be seen that the Mobile & Ohio rates were increased because of the low rates being maintained by the Mobile & Ohio under Order No. 2270.

The rates shown in Column No. 1 were those prescribed by the Mississippi Railroad Company September 4, 1912, for all Class 1 carriers in Mississippi, and its order was taken into court by the Illinois Central and Y. & M. V. The M. & O. did not participate in that litigation, and as a result the I. C. and Y. & M. V. were permitted to publish higher rates than those shown in Column 1 (684).

That you may see what these rates are now, they are shown under Column headed "May 1st, 1915" covering sand. Notwithstanding the result of the litigation, the M. & O. was not permitted to increase its rates above the Column 1 rates. The Column "May 1, 1915," only applied to sand; the purpose of the order authorizing these rates was to reduce the rates in effect on sand on the I. C. and the Y. & M. V., but it had the opposite effect on the M. & O. and increased our rates (Rec., 685).

[fol. 278] Order No. 4212 applied to rates on sand for municipal roadbuilding only, and was so published by the Illinois Central and Y. & M. V. leaving in effect on those lines higher rates on sand for other than municipal roadbuilding. Following the issuance of this Order the M. & O. was granted authority to apply the rates shown in Order No. 4212 on sand for all purposes. In other words, we were permitted to advance our rates on sand for other than municipal roadbuilding so as to be no lower than on sand for municipal roadbuilding.

No further changes were made in these rates until June 25, 1918, when both sand and gravel rates were increased one cent per 100 pounds, or 20 cents per ton, under General Order No. 28 of the Director General, and on August 26th, 1920, were increased 25 per cent under Ex Parte 74.

Q. That brings you down to the column marked "October 1st, 1921," doesn't it?

A. Yes, sir. On July 6th, 1921, the Mississippi Commission issued its order No. 5247 prescribing a scale of rates on sand and gravel for highway construction, beginning at 40 cents per ton for distances 15 miles and under.

By Mr. Burchmore:

Q. Wasn't that 5257?

A. No, sir, I will come to that later. This scale was considered by the carriers to be so low that they applied for and secured a restraining order from the court. Before the case went to trial, the Attorney General of the state of Mississippi told the Mississippi Commission that the enjoined rates were unreasonably low and that he would not undertake to defend them in court, and suggested a new scale. While the carriers considered the rates suggested by the Attorney General as being too low, nevertheless, in order to avoid further litigation they published [fol. 279] them under protest. The Mobile & Ohio joined the Illinois Central and other carriers in contesting the Commission's order in this instance, and thereby obtained the benefit of the revised scale. Those are the rates prescribed by the Mississippi Commission in its Order No. 5257, effective October 1st, 1921 (Rec., 686).

None of these columns show the rates which were enjoined. I stated they started off with 40 cents for 50 miles and longer. These rates were arrived at by taking the Illinois Central—Y. & M. V. rates of June 24th, 1918, which applied on sand and gravel for municipal roadbuilding, and increasing them 25 per cent twice, to reflect the June 24th, 1918, and August 26, 1920, increases, instead of the arbitrary increase of 20 cents per ton authorized by the Director General effective June 25th, 1918, and the 25 per cent increase of August 26th, 1920. This resulted in substantial reductions in the rates of the Illinois Central and

Y. & M. V. There have been no changes in those rates and they are now in effect. There have, however, been some changes in the minimum carload weights and descriptions as shown on the bottom of the exhibit (Rec., 687).

It will be seen that those rates, applying on sand and gravel for highway construction, effective October 1st, 1921, resulted in substantial reductions in our existing sand rates, but that, generally, they increased our gravel rates for distances over 30 miles, and reduced them 3 cents per ton for distances 30 miles and under. To state it differently, it made our rates on Commercial gravel, or gravel for other than highway constructon, lower for distances over 30 miles, and 3 cents higher for distances 30 miles and under, than on gravel for highway construction.

[fol. 280] With that situation before us we made application to the Mississippi Commission for authority to advance our commercial gravel rates so as to be no lower than the rates on gravel for highway constructions. In response to our application, the Mississippi Commission granted us the authority asked for, but coupled with it the requirement that we reduce our rate for distances under 30 miles, from 50 cents to 47 cents per ton, notwithstanding they were permitting the Illinois Central and Yazoo & Mississippi Valley Railroads to maintain a rate of 70 cents per ton for that distance.

All of the rates shown on this exhibit are the rates of the M. & O. Railroad, and were prescribed by the Mississippi Railroad Commission and published by us under protest.

Since October 1st, 1921, the rates of the Illinois Central and Y. & M. V. on sand and gravel for municipal roadbuilding, have been the same as the M. & O. Rates, but on sand and gravel for other than municipal roadbuilding the Illinois Central and Y. & M. V. rates are substantially higher (Rec., 688).

Notwithstanding these low rates in Mississippi, the Mississippi Railroad Commission is now considering a further reduction in the rates on sand and gravel for municipal roadbuilding under Docket No. 5257, which has been heard but not decided.

We were cited to appear before the Mississippi Railroad Commission, to appear before them and show cause

why we should not be required to reduce our rates on sand and gravel for highway construction in Mississippi. We had a 10-days hearing on it. I have some other exhibits and desire to make very little comment on them (Rec., 689). [fol. 281] Page No. 2 is a comparison of our present Mississippi rates with our proposed scale in the last column, and with the rates we are carrying on interstate traffic in other states through which we pass. I don't think it necessary to make any comment, the comparison speaks for itself.

Sheet No. 3 is a comparison of the present single line rates of the Mobile & Ohio Railroad on sand and gravel in Mississippi with other mileage scales shown below, most of which were prescribed by the Interstate Commerce Commission.

Sheet No. 4 is a continuation of the mileages shown on Sheet No. 3.

Sheet No. 5 is a statement of the Mobile & Ohio Railroad's Mississippi Rates and the Proposed rates, with intrastate rates in the states in the south other than those served by the Mobile & Ohio Railroad. I want to make a correction at the bottom of that page, the explanation of C should be gravel, not washed; D should read gravel washed. C reads to apply on Class 1 roads on gravel, not washed, and sand (Rec,, 690).

There is one other thing I want to call attention to, the unusual effect on the Mobile & Ohio Railroad's rates caused the revisions in the sand and gravel rates which have been made by the Mississippi Commission since 1912. In addition to the general increases under General Order No. 28 and Ex Parte 74, the Mobile & Ohio Railroad has received two increases in its rates since 1912, both of which were due solely to orders of the Mississippi Commission which were issued for the purpose of reducing the rates of the [fol. 282] Illinois Central and Y. & M. V. Railroads. To illustrate, on April 13th, 1915, the Mobile & Ohio Railroad's rate on sand for commercial use for 75 miles was 30 cents, and the Illinois Central and Y. & M. V.'s rates was 70 cents, on the day following May 1st, 1915, the Commission issued its order No. 4212, prescribing a new scale of rates on sand for application on all lines in Mississippi, and under that scale the rate for 75 miles was 45 cents, the effect of this new scale was to reduce the Illinois Cen-

trol and Y. & M. V. Scale from 70 to 45 cents, and to advance the Mobile & Ohio Railroad's rate from 30 to 45 cents.

That discrepancy existing at that time between the Mobile & Ohio rates and the Illinois Central rates, was brought about by the fact that the Illinois Central Railroad took their case into court and the Mobile & Ohio did not (Rec., 691).

The M. & O. did not ask the Mississippi Commission to allow it to increase its rates up to the rates of the Illinois Central after that road got its increase by court proceeding. What we did ask the Commission to let us do was to continue to carry a rate of 50¢ on sand for distances of 50 miles and under, instead of reducing it to 47¢, which was the rate prescribed in Order No. 4212. They declined to do this, although the I. C. and Y. & M. V. rate at the same time was 70¢ a ton.

Another illustration is gravel for road building purposes; on September 30th, 1921, the Mobile & Ohio Railroad's rate for 75 miles was 62½ cents, and the Illinois Central and Y. & M. V.'s rate was 81 cents, on October 1st, 1921, the following day, the Commission issued its Order No. 5257, prescribing a new scale of rates on gravel for roadbuilding for application on all lines in Mississippi, and under that scale the rate for 75 miles was 70 cents. The effect of this new scale was to reduce the Illinois Cen- [fol. 283] tral and Y. & M. V.'s rate from 81 to 70 cents, and to advance the Mobile & Ohio Railroad's rate from 62½ cents to 70 cents. In other words, the only advances we have been able to get in Mississippi were because of the attacks made on the Illinois Central Railroad's rates, and because of orders issued by the Commission for the purpose of reducing the Illinois Central and Y. & M. V.'s rates (Rec., 692).

Page 6 compares the present rates of the Mobile & Ohio Railroad on sand and gravel with the present rates of the Illinois Central Railroad on sand and gravel; the rates shown under the heading "I. C. Railroad" also apply on the Y. & M. V. Railroad.

But I would like to also call attention to Page No. 7, which shows the rates prescribed by the Mississippi Commission in 1912, which were not contested by the Mobile & Ohio Railroad, but published under protest, compared with the rates

that were secured by the Illinois Central and Y. & M. V. Railroads as the result of their contesting the Commission's order. The first two columns of rates apply on sand, and compare the Mobile & Ohio Railroad rates with the Illinois Central and Y. & M. V.'s rates.

The Illinois Central and Y. & M. V.'s rates are from 50 to 150 percent higher than the Mobile & Ohio Railroad's rates. The next two columns compare the gravel rates of the Mobile & Ohio Railroad with the gravel rates of the Illinois Central and Y. & M. V. Railroads; they also run in some cases as high as 100 percent greater than the Mobile & Ohio (Rec., 693).

I just wanted to call particular attention to Docket No. 2270, this is the first order issued by the Mississippi Railroad Commission prescribing rates on sand and gravel in [fol. 284] Mississippi, that is, the order issued in August, 1912, and made effective on the 4th of September, 1912; that is the scale in which they prescribed a rate of 1 cent per 100 pounds for 50 miles or less, etc. Then, there is a note following the scale, that I would like to call attention to, reading as follows: "The publication of the above rate however shall not prohibit any railroad from transporting sand or gravel at a less rate when used for the construction of public highways or public buildings." (Rec. 694.)

Cross-examination.

By Mr. Martin:

From points in the Iuka District to points on the M. & O. there are some special rates which were put in by the Mississippi Commission to dispose of a complaint that had been before the Commission for many years. The ones from Iuka to certain points on the M. & O. when published were less than the mileage scale but whether they are now I can't say (Rec. 695).

My understanding is that there are very few commodity rates in Mississippi lower than the scale, with the exception probably from Iuka. The M. & O. rates on sand and gravel are the same for all purposes, but the other lines have a scale that applies for commercial use which differs from the scale where the consignment is to a public official.

I might say that I remember that those rates from Iuka to points on the Mobile & Ohio Railroad were put in after a conference with the Mississippi Railroad Commission in which the Commission stated that if the Southern Railway and Mobile & Ohio Railroad would publish certain specific rates from Iuka to points on the Mobile & Ohio Rail- [fol. 285] road, they would dismiss a complaint pending against the carrier attacking the rates generally in Mississippi (Rec. 696).

Those are the only rates I know of to points on the M. & O. and those are the conditions under which they were published. I show the Louisiana Scale of rates on page 5 of the Y. & M. V. No, it isn't a fact that the Louisiana Commission prescribed scales of rates on roadbuilding material over there today lower than in Mississippi. You, Mr. Martin, filed an exhibit in that last hearing in Mississippi under Docket No. 5257, a letter from the Chairman of the Louisiana Commission, in which he stated that the arrangement under which these special rates on roadbuilding gravel were applied would expire December 31, 1925 (Rec. 697).

I beg your pardon, it was with respect to Arkansaw, and not in respect to Louisiana. I understand Louisiana has a scale there under the heading of Arkansas which are lower than the rates that are being applied in Louisiana west of the river. They are not lower than in Mississippi. My understanding is that the rates applicable in Louisiana west of the Mississippi River are the same as they are under the head of Arkansas, which are higher than the rates in Louisiana east of the Mississippi River. That is shown on page 5 (Rec. 698).

I don't remember having an exhibit that applied west of the river or showed that the Louisiana rates were lower than those applied in Mississippi. The only rates in Louisiana I know of are shown on page 5 under the heading, "Louisiana," Column A—those are for municipal and roadway building.

When I said there were 8200 cars moved, the movements occurred in April, June, August, and October, 1925 (Rec. 699).

[fol. 286] Mr. Martin: I move to strike out all the testimony and exhibits dealing with the question of discrim-

ination in Mississippi intrastate rates against the interstate rates, I renew my objection at this time.

Exam. Waters: The objection is on the record.

The M. & O. has a route from Montgomery to Birmingham in connection with the Southern through Maplesville, or in connection with the Alabama Great Southern and the L. & N. through Tuscaloosa (Rec., 700).

By Mr. Cotterill:

I think my exhibits show there are specific rates published lower than the interstate mileage scales on the M. & O. Railroad but I don't think they move any business from Memphis, while on the I. C. the rates from Memphis are on the mileage scale, with the exception of certain proportional rates that apply from Memphis on traffic originating at points beyond (Rec., 701).

I understand there is and has been for years a large movement of gravel from the Iuka District and from Tennessee pits into Memphis. I know what the rates are and I think I know in a general way why the rates were made as they are. I understand the I. C. is not to be represented by witnesses nor counsel, but I may say that I was authorized by the Illinois Central to state that they regarded the present rates in Tennessee as entirely too low and that they were not even willing to subscribe to the mileage scale submitted by the other carriers because they considered them too low, particularly for short distances (Rec., 702).

[fol. 287] Q. Were you authorized to make any statement as to why they are not present and participating in the case?

A. The only information I have direct from them is a letter from Mr. Sheppard, Assistant General Freight Agent.

Mr. Walker: The Illinois Central Railroad, have they a representative here?

Mr. Wilson: I am not taking part in the case.

Mr. Walker: They have been present here, I don't know whether they want to testify or not.

Mr. Wilson: I don't want to testify, but Mr. Chadwick seems to have covered the Mississippi situation thoroughly.

Mr. Cotterill: Mr. Chadwick don't seem to know anything concerning the details of the interstate specific point to point adjustment in the Valley Territory.

Mr. Burchmore: I call the Commissioner's attention to the fact that he said he knew the rates and the history, why they were put in, what is it he is supposed not to know?

I said I had no definite knowledge as to exactly the movement into Memphis, but I do understand and believe that there has been and is now a very large movement of gravel and sand, or gravel at least from the Iuka district on the Southern Railway's Memphis Division, and from Camden, Tenn., on the Moblie & Ohio Railroad into Memphis; I know that the rate is 79 cents per ton, and I know that that is the present day equivalent of a rate of 50 cents a ton that was put in years ago to enable those pits to get into Memphis in competition with gravel that was secured from the river, and in competition with pits nearby Memphis (Rec., 703).

Q. Are there rail movements of many of these materials into Memphis originating on the Illinois Central Railroad? [fol. 288] Mr. Walker: Do you know?

Mr. Chadwick: I don't know that.

Mr. Walker: I have no objection to your asking him anything you want to, making him your witness, but he didn't undertake to testify about the movement from the Illinois Central Railroad, and this is not proper cross-examination. Furthermore, the rates to Memphis are not involved in the proceeding.

Mr. Burchmore: I object to this line of interrogation because the rates to any point in Tennessee are not involved.

Mr. Cotterill: The witness has tendered certain exhibits purporting to show certain interstate and state rates which he has selected, and I submit that it is proper for me to interrogate him to determine whether or not the showing he made was in fact representative of the rate level of an important moving tonnage in that territory.

Exam. Waters: If he knows, whatever a witness knows it is proper for him to testify, and if he doesn't know, he can say so, that is not a question of relevancy, it is a question of knowledge. Ask him your question (Rec., 704).

I do not know that there are any movements of these materials into Memphis originating on the Y. & M. V. I

didn't think there were any from points on the M. & O. There is none that I know of. My statement was that there was a movement from pits in the Iuka District on the Southern and certain movements on the N. C. & St. L., but I have no knowledge of any other movements into the Memphis District from any other line. I can't say whether they are published into Memphis specific point to point rates from points on other lines than those I have named (Rec., 705).

[fol. 289] I consider the intrastate movement of these products within the State of Mississippi comparatively large. My comparison is based on requests before the Mississippi Commission, which requested all carriers in Mississippi to prepare statements showing the actual movement of sand and gravel in Mississippi for four months, April, June, August and October, 1925, for use in a hearing now pending before that Commission; all of the carriers I understand prepared that information and sent it to the Mississippi Commission. That was where the information that I gave in my testimony came from. Now, I understand that someone else has all of those figures here that they could put them in the record, and we have no objection.

Q. Would you mind stating to me who has them?

A. The Mississippi Commission has them (Rec., 706).

So far as the M. & O. is concerned, it is my understanding that the carriers contemplate that the general mileage basis in the Valley Territory shall be adhered to without exception. I have said nothing about the crushed stone rates from the Columbia Quarry and Krause, Ill., into the Mississippi Valley. They are on a very much lower level than our proposed scale. The rates from Columbia and Krause have never been before the Commission under an I. & S. Docket that I have heard of. You probably refer to our recent advance in rates on gravel from Illinois to points in the Mississippi Valley which we advanced to protect the basis we are now offering here. A protest was made against that increase by some Mississippi Highway Commissioner and I asked the Interstate Commerce Commission by telegraph not to put in the rates, and we never heard any more from it, and they permitted the rates to become effective (Rec., 707).

[fol. 290] I don't recall the rate from those points to New Orleans. The advancing of those rates made them about 50% higher than the Mississippi rates. Prior thereto they were lower; they were put in at the urgent request of Mississippi authorities to assist their roadbuilding program. We have had no movement under those rates since then and don't expect to have any. Meridian is 140 miles north of Cairo; I should say the quarry is about 140 miles north of Cairo and these gravel pits are about 30 miles north of Cairo.

(Witness excused.)

B. F. MORRIS was thereupon called as a witness and, having been duly sworn, testified as follows (Rec., 708):

Direct examination.

By Mr. Mohr:

I have been employed in the Traffic Department of the L. & N. at Louisville, Ky., for the past 19 years, and am familiar with rate adjustment matters in the South generally and on the L. & N. particularly, as well as in the particular adjustment of sand and gravel involved in this proceeding.

The principal interest of the Louisville & Nashville Railroad lies in rates on sand and gravel from Montgomery to stations on its line in Florida and Mississippi, and rates on slag from Copperhill, Tenn., to points in Georgia, Florida and Mississippi, and in the rates on the movement of these commodities from off its line in Georgia, which I might add is very limited. Indirectly our company has a decided interest in the entire proceeding, as the rate level to be determined necessarily upon a statement of conditions will fix the measure of our rates in the territory south of the Tennessee River (Rec., 709).

[fol. 291] The L. & N. didn't join other major Alabama and Georgia carriers in the mileage scale on sand, gravel, stone and slag in 1916, and submitted no mileage scales to the Georgia or Alabama Commissions at that time. The L. & N. didn't concur in the mileage scales on sand, gravel, stone or slag, submitted to those Commissions by other carriers in 1921, but submitted a separate proposal which

was higher than those of the other carriers and was confined to a single mileage scale.

The scale proposed by our company to the Georgia and Alabama Commissions in 1921 reflected exactly the normal mileage scale which has been operated over our system for years except where departures have been necessitated by competitive forces (Rec., 710).

The departures from our normal mileage scale have not been numerous. The L. & N. decided this month to join other lines in proposing mileage scales submitted for application in the territory involved in this proceeding. We reached the conclusion that the necessity existed for uniformity in the adjustment on these movements as to the measure of the rate level, and it is now our purpose to modify the proposals heretofore submitted to the Alabama Commission. The scales now proposed are substantially lower than our prior proposals to the Alabama and Georgia Commissions, an exact comparison being afforded by my Exhibit No. 201.

(The statement was thereupon received in evidence marked "Defendant's Exhibit No. 201, Witness Morris.") (Rec., 711.)

As I said, the original proposal of the Louisville & Nashville Railroad only contemplated a single line scale. As I will later substantiate by other exhibits, this exhibit No. 201 in actuality affords a comparison with the normal rate adjustment prevailing on these commodities over the entire [fol. 292] L. & N. system, with the exception of intrastate adjustments required by orders of various state regulatory bodies. In other words, the scale shown as the scale originally proposed by the Louisville & Nashville Railroad in Column 1 of Exhibit No. 201 is our basic mileage scale observed for years, although it is not published as such in tariff form, and the single and joint line scales which we now propose will show the concessions we have made in order to submit a uniform adjustment in the territory here under consideration.

This proposed scale is to be applied on sand and gravel, crushed stone and slag, and if approved and adopted will substantially reduce the rates of the L. & N. from Montgomery to its stations in Mississippi and Florida, which

are the destinations in which we are directly interested here (Rec., 712).

The extent of the reductions in indicated by my Exhibit No. 202.

(The statement was thereupon received in evidence marked "Defendant's Exhibit No. 202, Witness Morris.")

With reference to the rates on slag from Copperhill, Tenn., I must say that Copperhill is located on the old line of the L. & N., formerly the Atlanta, Knoxville and Northern Railway, between Etowah, Tenn., and Murphy Junction, Ga., as is shown by my Exhibit No. 203.

(The statement was thereupon received in evidence marked "Defendant's Exhibit No. 203, Witness Morris.")

The red lines shown on Exhibit No. 203 indicate the destination territory affected by the I. & S. case 2470 (Rec., 713).

Mr. Mohr: Mr. Commissioner and Mr. Examiner, at the opening of this proceeding, reference was made to the fact [fol. 293] that there was a peculiar situation in respect to transportation conditions on the Atlanta Division old line; at that time it was our purpose to call as a witness at this hearing one of our transportation officials for the purpose of having him testify regarding the adverse conditions on that line; by reason of the fact that this hearing has taken up considerable time, and that it is the desire of all parties to terminate it as promptly as possible, we have obtained the consent of opposing counsel to submit in this record the testimony given by one of our transportation officials in a previous case, I have one copy of that testimony here at this time, which I intended to use as a guide in questioning our witness, I have telegraphed to Louisville, and there is now being prepared an ample number of copies for all parties, and I should like to offer this at this time with the understanding that by tomorrow or at the latest Monday, I will have ample copies of the testimony to give to the parties, if that is satisfactory to Your Honors.

Exam. Waters: Is there any objection?

Mr. Burchmore: What is the purport of that testimony?

Mr. Mohr: It deals entirely with the physical transportation conditions on the Atlanta Division old line, extending

from Murphy to Marietta, shown on Exhibit No. 203, and it will cover the direct and the cross examination, and I also agreed with counsel to make this statement in respect to that testimony, but if the witness is produced his testimony would be similar to that he made previously, with this exception, that the conditions referred to in this testimony that it is quite frequent for large rocks to fall down on the [fol. 294] track, or trees from the mountains, but that condition no longer exists, because all the trees have fallen down and the ground has settled very materially (Rec., 714).

Mr. Burchmore: I have no objection.

Exam. Waters: I think it would be better to offer them as an exhibit, you don't wish that incorporated?

Mr. Mohr: No, I offer that as Exhibit No. 217.

Exam. Waters: When will you have the other copies here?

Mr. Mohr: By tomorrow.

Exam. Waters: We will have it marked now with the understanding that you are going to follow it up during the hearing by the other copies.

Mr. Mohr: I am satisfied they will be here tomorrow or not later than Monday. Mr. Morris tells me they will be here tomorrow.

Exam. Waters: This exhibit will be received and made a part of the record, if there is no objection.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 217, Witness Morris.")

We do not purpose to support the rates published in the schedule under suspension in I. & S. Docket 2470 because this month we decided to join the other carriers in their proposed mileage scales (Rec., 715), and in this instance we propose to apply the carriers' submitted single line scale on slag from Copperhill to Atlanta and stations on the Atlanta Division. I should say that we do not propose to apply that single line scale for the distances via Etowah, Tenn., via which junction the traffic is actually handled.

I should like to briefly refer to Exhibit No. 204, which is an excerpt from the decision of the Commission in I. C. C. Docket 7176, the case referred to from which the testimony [fol. 295] is taken, as mentioned by counsel.

(The statement was thereupon received in evidence, marked, "Defendant's Exhibit No. 204, Witness Morris.") (Rec., 716.)

Exhibit No. 205 is simply a statement showing the engine ratings on the Atlanta Division old line between Etowah, Tenn., and Marietta, Ga., and on the new line, which is the one over which the traffic is handled.

(The statement was thereupon received in evidence, marked, "Defendant's Exhibit No. 205, Witness Morris.")

Also, I should like to refer to Exhibit No. 206, which is an exact reproduction of our current routing circular covering the handling of traffic between points on the Atlanta Division, and which briefly stated provides that they do not handle traffic from Copperhill, Tenn., to Atlanta or points on our new line from Etowah to Atlanta, via the old line route, in fact it specifically provides for the handling of traffic from Copperhill to Atlanta and the other points in question *via* Etowah.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 206, Witness Morris.") (Rec., 717.)

Exhibit No 207 shows first the present rates on slag from Copperhill, Tenn., to all of our Atlanta Division stations, including the old and new lines.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 207, Witness Morris.")

The suspended rates apply to the stations Cartersville to Atlanta inclusive, and to stations on the old line, Keithsburg, Va., to West Oak, Ga., inclusive. I have shown in the first column rates on the basis of the scale which the carriers are submitting in this proceeding, and those rates are based first on the distance via Etowah, Tenn., to stations on the new line, and the short line distances via the old line [fol. 296] to stations on that part of the division. As you will observe, we are proposing reductions to many stations which are not actually involved in the I. & S. Proceedings (Rec., 718).

I probably should explain here, as I had intended to, that our rates on slag from Copperhill for several years reflected

the rate from Birmingham, Ala.; in other words, at the solicitation of the Tennessee Copper Company, and in order to permit a movement of slag from Copperhill to Atlanta, we established the same rates as were currently in effect from Birmingham to Atlanta. The rate of $1.30 is the present rate from Birmingham to Atlanta; however we are now advocating a mileage scale. The present rate from Birmingham to Atlanta on slag is $1.40 or within 4 cents of the rate we are proposing in our submitted scale; I am stating that from recollection. The L. & N. concurs in the mileage scale of the carriers for general application, the only special issue being what mileage shall be used from Copperhill to Atlanta and intermediate points (Rec., 719).

We are not asking a higher scale on the old line. I want that clearly understood. We are merely asking in the computation of distances to use the route via which the traffic is actually handled. Referring to Exhibit No. 203, the points of destination on that part of the Atlanta Division old line, shown in red between Keithsburg and Elizabeth, the distances from Copperhill are computed via the old line. My Exhibit No. 208 shows the existing rates on slag from Copperhill to points in Florida and Georgia beyond Atlanta.

[fol. 297] (The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 208, Witness Morris.")

The present rates from Copperhill to such points reflect the carriers' submitted scale, now concurred in by the L. & N., based upon distances via Etowah, Tenn., and our new line. (Rec., 720).

There is some movement to this territory from Copperhill but I don't know its exact extent.

My Exhibit No. 209 is submitted for the purpose of comparing the carriers' submitted scale in this proceeding with the rates on sand and gravel from producing points on the Ohio River, Frankford, Ky., Tarzan, Fla., and Bluff Springs, Fla., to destinations ranging I should say from 1 to 200 miles. The purpose of it is to show that the measure of the proposed scale is not unreasonably high, and I do know that there is a movement of sand under the rates from those origins into our territory, I have not undertaken

to show the movement in details. All of the points shown are on our line (Rec., 721).

(The statement was received in evidence and marked "Defendant's Exhibit No. 209, Witness Morris.")

The joint line scale is shown under the proposed basis because I wanted to show that the joint line scale proposed by the carriers here, when measured by our normal single line rates, is a reasonably low scale, in other words, the joint line scale here proposed is not greatly higher than our current single line rates, which do and have moved sand and gravel over our lines for years. The rates from the origins to destinations shown are not involved here, and we are not proposing these scales to apply from these points.

Exhibit No. 210 is a similar statement comparing the submitted scale of rates from Louisville to junction points in Central Kentucky where there has for a long time been a substantial movement of sand and gravel (Rec., 722).

[fol. 298] The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 210, Witness Morris.")

The statement shows the extent of the movement. They are all single line rates, as the routing shows under explanation of routes.

Exhibit No. 211 is a similar comparison of the submitted scale with the rates of the Louisville & Nashville Railroad on crushed stone from producing points to destinations on its line.

(The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 210, Witness Morris.")

In this Exhibit I have shown the actual movement in cars for the year ended May 31st, 1925, where the information was readily available.

The succeeding exhibits, 212 to 216, inclusive, are like rate comparisons submitted in support of the measure of the carriers' submitted scale, and I do not believe they need any special explanation (Rec., 723).

Mr. Mohr: Mr. Examiner, we make formal offer of these exhibits Nos. 201 to 217 inclusive.

Exam. Waters: They may be admitted.

(The statement- were thereupon received in evidence, marked, "Defendant's Exhibits Nos. 212, 213, 214, 215, and 216, Witness Morris.")

Cross-examination.

By Mr. Cotterill:

I understood the testimony submitted by the A. B. & A. to indicate its desire to be permitted to make from producing points on its line to Birmingham a rate the same as made by your line for the further distance from Montgomery to Birmingham, but I have not considered the effect of that (Rec., 724).

[fol. 299] I may explain our own situation in this manner, and it will probably serve as the best answer I could give to your question. We are asking no exceptions to the application of the submitted scale, if you will allow me to use the expression, believing that it was lower than it should properly have been, and we in concurring in this scale, we purpose applying it literally except perhaps as to the maintenance of the Montgomery district, which includes shipping points just north and just south of the Alabama River and into the Southeast beyond 150 miles. That is our own position, and that being true, we naturally can not look with favor upon departures of that kind.

I believe you misunderstood me; I said it would lower our normal rate level, I don't know what the revenue effect would be. I don't want to be construed as making that statement, because I don't know whether it would lower it or not when applied to all of these commodities. I know this, from my rather extensive dealing with these sand and gravel cases, that our normal mileage scale is more nearly observed over our system than any railroad I know of. It is a fact, however, that we have very low rates. If we could increase the rates from Montgomery to Birmingham to the basis of the carriers' proposed scale, it would undoubtedly have an effect upon the revenue results, because there is undeniably quite a large movement, I don't know what the revenue effect will be, but I do know that our normal rate

level which is observed generally, would be reduced if it were applied over our entire system.

Other substantial movements on our lines, aside from those out of Montgomery and slag from Copperhill, were crushed stone, as shown by my Exhibit No. 211, where there is listed a movement of 154 cars from Franklin, Tenn., to Gallatin in a year's period. All of the movements are shown [fol. 300] on the exhibit, 858 cars from Whitehead, Tenn., to Nashville, Tenn. (Rec., 726).

Yes, that is limited to movements of crushed stone. I won't detail the movements of sand and gravel unless you insist, but I can't point out where the substantial movements are. I have pointed out a movement of upwards of 850 cars in a year from all those producing points, though not pointing to one destination, which I regard as illustrative of an important movement. Unquestionably the Montgomery District is the largest shipping point on our line, and I regard the movement from the Ohio River into Central and Eastern Kentucky as a movement of large importance (Rec., 727).

Where the movement of third importance would be I don't know. There is a substantial movement of slag from the Birmingham District to stations on our own line. It is true most of the intrastate movements in Alabama occur under point to point rates that are less than the Alabama mileage scale, but in so far as the Alabama State traffic is concerned, the L. & N. applies the so-called statutory rates only on sand; our normal rates apply on gravel. Where there are specific point to point rates, except in movements from the Ohio River to Central Kentucky, they are point to point rates based upon our unpublished basic mileage scale (Rec., 728).

By Commissioner Lewis:

Q. I don't quite understand, I thought from your testimony that the Louisville & Nashville Railroad was pretty hidebound in maintaining a fairly high standard of rates, but this last statement about rates from point to point conveys to my mind the fact that possibly you do make exceptions in which there is a material reduction from your standard rates, is that right?

A. Mr. Commissioner, there are very few exceptions to [fol. 301] our normal mileage scale on these materials all over the system, and those exceptions only occur where the force of competition has made it necessary. The answer to your question specifically is that we do not maintain many exceptions to our normal or basic mileage scale. When I said point to point rates from the Ohio River into Central Kentucky, I only referred to the fact that we have never adopted the plan of publishing mileage scales, where we could avoid it, we use our basic or unpublished scales, but name the rates in point to point fashion.

There are not many exceptions in number when you get south of Kentucky, down in Tennessee, Georgia, Alabama, Mississippi and Florida. The most notably exception is from the Montgomery District to the Birmingham District, and the Anniston-Alabama City Group (Rec. 729).

Yes, sir, we are proposing to eliminate even those exceptions and to apply the submitted scale, if approved by your Commission, from the Montgomery District to the Birmingham-Anniston District. Having agreed to the scale rather against our own views, we are not asking exceptions to it, and I suppose the effect of it would be in practice the maintenance of a maximum scale, although we do feel that if future conditions necessitated it, we could approach the Commission in the usual manner, and within reasonable limits offer to justify such departures as are made; I merely reserve that right because ignorant of future conditions; today we are asking no exceptions to the scale.

By Mr. Cotterill:

In making my reservation I have in mind that if another line attempts to put its producers into a market served by us from producing points on our line we want the right to [fol. 302] explain the circumstances to the Commission so as to take such steps as in our judgment would be necessary to protect producers on our line (Rec. 730).

Stated otherwise, it is the position of the L. & N. that the appropriate scale shall be literally adhered to, bearing in mind the possibility of some grouping of competitive points around a given destination; e. g., a large place like Birmingham, consisting of 10 or more named municipalities, with

the grouping of 2 or 3 producers, in our view properly grouped, which are next to each other in one district, where a mileage group might separate them. We have specifically stated that we propose applying the scale literally according to the mileage breaks in the scale.

By Mr. Burchmore:

Q. But from Jackson's Lake on the Louisville & Nashville Railroad a few miles north of Montgomery, would you apply the single line scale at Montgomery to points in Georgia reached we will say over the Atlantic Coast Line? (Rec., 731).

A. As I just stated, we have proposed, although it is not in this proceeding, to apply the Montgomery rate from the group of points around Montgomery, which includes Jackson's Lake on the one side, and some points as I understand on the West Point route or the Seaboard perhaps south of Montgomery, for the purpose of creating an origin group there.

Q. Never mind the purpose, if the mileage from Jackson's Lake by way of Montgomery and the Atlantic Coast Line to a station in Georgia makes a certain figure, you will charge a less rate if the mileage from Montgomery over the Atlantic Coast Line makes a less figure, is that it?

A. We will charge a less rate provided the tariffs go into effect.

[fol. 303] Q. But you will get the scale just the same?

A. If that is the way the scale works out, we will get if.

By Mr. Moffett:

The Georgia Railroad Commission did not, so far as I know, recognize any differences on the old line and the new line in the State of Georgia in fixing its freight rates.

By Mr. Brooker:

When I made these comparisons between Pennsylvania, Ohio and West Virginia points under the rates in our proposed scale, I did not consider the recent decision in Docket 15326, Pennsylvania Sand and Gravel, where there was established a maximum scale in that territory (Rec., 732). I have exhibits here prepared from the specific tariffs. I

had a number of exhibits on the Duquesne Scale in Pennsylvania, but in deference to the procedure I eliminated them as I thought it would duplicate testimony already put in by Messrs. Doss and Crane..

The rates shown here will be subject to revision based on our scale if they are in the territory covered by the scale. Though I did not undertake to investigate as to any movement from some of the origin points in Central Freight Association Territory, but I did know from another investigation that there was such a movement from New Albany, Indiana, into the North and I merely tried to select points which in my judgment were shipping points, and checked them against some of the lists furnished me, and I know that they are in fact shipping points, starting from Kankakee, Ill., to points on the New York Central, I don't know whether there is a specific movement there under these rates (Rec., 733).

[fol. 304] Q. Did you by chance discover a 77 cent rate from Kankakee, Ill., to Danville, Ill., for a distance of 107 miles?

A. No, sir, I did not.

Q. And I notice you show rates in one direction only, from Kankakee, and did not take the rates in the other direction, I was wondering if you left those low rates out separately?

A. I didn't see the rates.

Q. They are right in the same tariff from which you took these rates.

Mr. Mohr: You can offer them if you like.

Mr. Brooker: I haven't got them here, but I know they are in effect.

Mr. Mohr: We prefer that you put them in and give them the proper reference.

I did not hear Mr. Roquemore testify as to the movement of 50 cars a day from Montgomery to the Birmingham District (Rec., 734).

Q. If you have the information, I thought perhaps you had it, otherwise I think Mr. Roquemore's statement is sufficient of 50 cars a day 300 days in the year, assuming you had that much, which would be 15,000, would you say then

that a thousand cars from Junction City to Birmingham would be an invasion of the Birmingham market as against the Montgomery shippers?

A. Yes, I understand the question, but I don't feel like I am qualified to say what would be an invasion of the Birmingham market. If what Mr. Pope is getting at is this, does the Louisville & Nashville Railroad object to the proposals to maintain the Montgomery rate to Birmingham because of the movement of this particular quantity of sand, I would probably say no, but I have seen the Mont- [fol. 305] gomery-Birmingham rate and the Howard, Ga.-Birmingham rate and the Junction City-Birmingham rate used for the last five years in an effort to bring down our entire rate adjustment on sand and gravel, and for that purpose alone we do not care to see it continued (Rec., 735).

Our proposition is founded wholly on the idea that the scale cannot be maintained if it is not maintained by everybody.

By Mr. Burchmore:

Referring to rates shown on one of my first exhibits to points like Pass Christian, Biloxi and Gulfport, I don't think there is a production of gravel of any consequence at or near Bay St. Louis; that's my own judgment from the fact that the Montgomery shippers have represented to us that their competition was with Hattiesburg.

I am speaking from recollection, I don't know. I don't know that Hattiesburg would ship down there from the Gulf & Ship Island R. R.; I can't answer that conveniently. The Weston Company is located somewhere in that direction; we have had some difficulty in furnishing facilities for the Weston Company; I don't know just where they do ship from (Rec. 736).

I don't know whether there is a very large movement from our line of sand and gravel into New Orleans; I don't think there is any movement out of New Orleans; there is some movement from Montgomery to Mobile by barge as I understand it.

(Witness excused.)

[fol. 306] R. J. Doss was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

Inasmuch as the formal complaints put in issue rates from Chattanooga and Montgomery to points in Florida, I will briefly state the carriers' position.

I have already explained that the carriers have in mind revising the rates in Southern Territory on and north of the Seaboard's Jacksonville-River Junction line, observing the carriers' proposed scale. We have not yet definitely decided what changes by reason of that program will be made in the through rates or in the proportional rates to and from Jacksonville applicable on traffic to points in Florida south of that line. Generally speaking, and I believe it is true without exception that the present rates to and from Jacksonville on these commodities are, with the exception of slag, subject to the combination rules tariff more often referred to as the Kelley Tariff, under which the rates are net 30 cents a ton, the combination nets 30 cents a ton less than the local rates to and from Jacksonville. In revising the rates under the carriers' proposed scale, the new rates will not be subject to that tariff, and that will make necessary some readjustment of the rates, proportional rates to and from Jacksonville applicable on South Florida business.

The rates on slag are made today by deducting 12 cents a ton from the factors to and from Jacksonville, that is the proportional rate to Jacksonville is 12 cents less than the [fol. 307] rate to Jacksonville proper, whereas, the proportional rates south of Jacksonville are also 12 cents less than what would normally be the proportion. We will no doubt with the revision in the rates to Jacksonville proper make some such arrangement as to the proportional rates to and from Jacksonville on the Florida business.

Now, take gravel from Montgomery, the local rate to Jacksonville is $1.89, and is not subject to the Kelley Tariff, but we have continued in effect the former rate of $1.92 to Jacksonville for beyond, and that proportion is subject to the Kelley Tariff.

My Exhibits Nos. 218 and 219 respectively show the present rates from Montgomery and Chattanooga to representative Florida points applicable on sand and gravel.

Exam. Lewis: The exhibits will be received and made a part of the record, if there is no objection.

(The statement- were thereupon received in evidence, marked, "Defendant's Exhibits Nos. 218 and 219, Witness Doss.")

It is proper to say that from Chattanooga to Jacksonville the proportional rate that was intended to be made effective was through some error not published, and the rates shown in my Exhibit reflect what the rates ought to be had we published the proper rate from Chattanooga to Jacksonville; it is our purpose as quickly as the tariff can be changed to put that rate back into effect. Now, the general basis for making rates on all commodities to and from this South Florida territory is Jacksonville combination, and in practically all cases, the full rates to and from Jacksonville are applied. In some of the revisions which have been made recently as for example on livestock and brick, we have made the through rates based on Jacksonville combination slight differences under the full local rates (Rec., 739).

[fol. 308] These exhibits which I have filed show that the per ton mile earnings at present are very low; the rate on gravel from Montgomery to Tampa for example is $2.86 a net ton, and to St. Petersburg $3.16 a net ton, so far as I know, there is no movement of sand from interstate points to South Florida points, Florida itself being a very large producer and shipper of building sand. Both the Seaboard and the Coast Line consider their present rates on gravel from Montgomery to Tampa and St. Petersburg as just about the minimum for which they can afford to handle the business. There is a considerable movement of gravel from the Montgomery district through Mobile and by water from Mobile to both Tampa and St. Petersburg.

The $3.22 is the rate on sand, the A reference is explained in a footnote showing that gravel is $2.86, it comes about through a difference in the proportional rate south of Jacksonville, and that represents the effort we made to meet the competition on the gravel.

Now, as I say, if we did not think those were already the lowest rates, we would try to meet that water competition in order to secure a part of the business. I have taken Mr. Aldredge's Exhibit No. 1, Sheet 16, on which he has shown the present rates from Montgomery to five South Florida points, and have refigured the distances via workable routes. As I recall, the tariff is restricted so that the present rates would not apply via the routes over which he has figured his distances; certainly the proportion that he uses south of Jacksonville would not apply via any of the routes which he has shown. The rate, for instance, from Jacksonville to Tampa, that is applicable via Tampa only, that is when business moves through Jacksonville or through Live Oak via the Coast Line, it would not apply when the movement was through one of those junctions in [fol. 309] connection with the Seaboard and the Coast Line south of those junctions.

Now, to St. Augustine, the shortest distance over which the business is handled is 406 miles, and to Tampa 549 miles, and to St. Petersburg 557 miles, Sarasota 593 miles and Miami 735 miles. The Complainants have asked that the rates on these commodities from Montgomery and I assume Chattanooga also be made using the formula prescribed by the Commission in the Class Rate Case, Docket 13494 (Rec., 741).

Yes, I mean the formula referred to in the decision, which the Commission thinks should be applied on classes.

Now, I have tried to calculate what the rates would be from Montgomery on that formula, and it would make the following figure, on gravel, from Montgomery to St. Augustine $1.73, to Tampa, $2.21½, to St. Petersburg $2.12, to Sarasota $2.73, and to Miami $2.60½. With the single exception of Miami, all of those rates are lower than what the rates would be if the carriers' proposed scale be extended to cover those longer distances. And to Miami my exhibit shows the carriers' proposed scale extended would make $2.53, whereas I figure the formula would make $2.60½.

Now, the per ton per mile earnings under the rates which I understand the complainants are suggesting, to St. Augustine would be 4.3 mills per ton per mile, and to Miami 3.5 miles per ton per mile; to the other points, the per ton per mile earnings would be 3.7 or 3.8 mills per ton per mile.

We would consider those very low proportions to apply between points north of that Florida line, not to speak of applying it to points south of that line (Rec., 742).

[fol. 310] Now, it is proper to say that all other shipping points of these materials have the same relative basis as do Montgomery and Chattanooga, and from our experience in the construction of rates to and from Florida we don't think that it would be satisfactory to the shippers even to try to carry the rates to and from Florida on any other basis which does not approximately reflect Jacksonville combination. It is so much easier to arrange a satisfactory adjustment when you have only to deal with the one factor north of Jacksonville, the proportion south of Jacksonville being constant in all cases, it is a much simpler matter in the way of rate adjustment.

I have been connected with Southern railroads for 26 years and am familiar with this Georgia territory and all Southeastern territory generally, from a railroad viewpoint.

Considering the conditions of transportation, traffic density, financial conditions or otherwise, I do not think that there is much difference in the traffic and transportation conditions or otherwise, I do not think that there is much difference in the traffic and transportation conditions which would warrant a different rate level between points within Georgia as compared with traffic movements and rates across the State line between Georgia and surrounding States (Rec., 743).

No, I did not mean that to cover the territory south of the Seaboard's Jacksonville-River Junction line; I meant within what we call Southern Territory, but I did mean it as to the territory north of that line. I have handled a good many adjustments from time to time, involving the South Florida traffic, and I think even on these commodities most of the shippers prefer to have the rates made with some relation to the rate to Jacksonville (Rec., 744).

[fol. 311] Of course there are objections in some quarters to the system of Jacksonville Combination. I think probably the Class Rate case developed more objections to it than had ever come to our notice before, but when you have any competitive commodity going into Florida like coal or sand and gravel, I think the Jacksonville Combination is the ideal thing; I am not speaking now so much about

the measure of the rate because all shippers want low rates and all railroads want high rates. I am speaking of the simplicity of the combination rate system. Your adjustment is practically fixed in one rate. It is much simpler than to compute the short line mileages from any shipping point to a destination in Florida. If the rate structure into Florida is so worked out that it involves some form of combination on Jacksonville, then as between two different or competing origin points the relation of the rates to the given point in Southern Florida is controlled by the relative distances to Jacksonville (Rec., 745).

As between Montgomery on the one said and Savannah on the other, rates predicated on the short line distances to given points south of that Seaboard line would of course be in an entirely different level than if they were made on Jacksonville, using distances to and from Jacksonville; if the entire structure is based upon the relative lengths of haul to Jacksonville, as opposed to the relative short line mileages, your origin relationships are different in the two systems, because it would make a much greater difference than figured only to and from Jacksonville. The short line distance from Montgomery to Jacksonville is 369 miles and from Birmingham it is 444 miles, a difference of about 75 miles (Rec., 746).

[fol. 312] If the destination be Tampa, Florida, there would not be so very much difference between Montgomery and Birmingham, because to the extent that there would be a line other than through Jacksonville shortening the distance from Montgomery, that line would also be available for shortening the distance from Birmingham.

Q. Well, we will not press the specific points further, but you fully concur in the thought that the origin relationships and for that matter destination relationships—no, that wouldn't be true, but certainly the origin relationships are different dependent upon whether the charges are made by a combination on an intermediate point, and as what they would be if made on the basis of the relative distances into the destinations in Florida?

A. There would be a difference certainly as between points in Alabama on the one hand and South Carolina on the other, I think, because of course that would not be true to points on the East Coast, as in every case they would be figured through Jacksonville (Rec., 747).

Yes, the short line mileages would always work through Jacksonville and that would also be the case to stations on the Seaboard and the Coast Line where the rate south of Jacksonville is through Jacksonville today. All of the traffic to the East Coast would certainly move through Jacksonville. Now, both the shipper and the Coast Line have to some extent alternate groups which would not carry the business through Jacksonville necessarily. We would use the Dupont-Lakeland line for all the business that we can handle that way, and the Seaboard has a route in connection with the G. S. & F. through Hampton, which they use alternately with their own route through Jacksonville (Rec., 748).

[fol. 313] I do not think the Seaboard's construction into Miami and to Palm Beach and that vicinity has reduced the mileage to the East Coast; I do not believe the mileage via the Seaboard's new line is as short as via the East Coast route. The Coast Line is considering—I believe has filed a petition with the Commission for a certificate of public necessity,—the construction of a short line between Montecilo and Berry; however, that is merely a relief line to reduce some of the congestion on our other lines (Rec., 749).

(Pages 750 and 751 omitted as argument of counsel.)

I would like to call attention, if you take any commodity that is moving under a mileage scale that is as low as any of these scales on sand and gravel and stone, you can take even the carrier's scale, and while it pays for the maximum distance of 460 miles something like 4.2 mills per ton per mile, that scale extended at the same rate of progression as was used for the distances say from 300 to 460 miles, will at the further distances yield rates that are just an absurdity, because as I pointed out, you extend our own scale up to 1,000 miles, and it will not pay but about two or three mills per ton per mile. That is true with most any scale that is designed to move low grade commodities for short distances or for distances up to three or four hundred miles. And just to show you how it works out, take on citrus fruits, where the Commission fixed a scale of rates to apply from Florida points to Jacksonville in making through rates to interstate points, you can take that scale and extend it at the same rate of progression for the upper distances in the scale or for the lower distances in the

scale, and it will actually reduce the rate on oranges from California to the East, as low as that rate is.

[fol. 314] As to the question of the consequential measure of the total charge received, that was sought to be taken care of by inflating the scale in proportion to the mileage of the haul in Florida (Rec., 752).

I think, of course, the important thing about this is the rate that you have established from Montgomery to Tampa, that is the thing of importance, whether it is obtained on Jacksonville combination or by using the scale. Now, using the formula that the Commission laid down in the Class Rate Case, as best I can figure it, the rate from Montgomery to Tampa on Gravel would be $2.11½; now, there is something wrong somewhere about that total, because it would only pay about 3½ mills a ton per mile, 3.8 to be exact. Now, whether that is in the scale itself, which we think is one of the important elements, or whether it is in the differential, you add to cover the haul in Florida, it just brings about too low a total (Rec., 753).

By Mr. Burchmore:

Q. I say, what fact is there that makes it appropriate to have that sort of rigid scale, with a sudden dropping of the scale as has been suggested?

A. That is a long story, I can give it to you if you want it, but the Commission has passed on it hundreds of times, it goes back to the beginning, the Jacksonville combination has been the basis to and from Florida ever since the railroads were first built.

Mr. Burchmore: I don't want to start anything, but if I may explain the point in my mind, the Atlantic Coast Line says you have got to have a rigid scale, you can't depart from it, but you say when you come to a haul from a point in Georgia or Alabama to points in North and South Carolina and Florida beyond a certain distance, then it is neces- [fol. 315] sary to have specific through rates rather than rates on the mileage scale, is there any fact that will justify such a condition of affairs? (Rec., 754).

Mr. Gwathmey: I object to that, it would not be thought necessary in this matter to go into an extended discussion of the reasons for the general application of what the carriers actually refer to as the Jacksonville combination

basis. We have an enormous mass of data here that can be put in on that subject, but my own belief is that the opinions of the Commission itself are so full of information as to that, I have the cases and will be glad to submit extracts from them here if necessary, that it really was not worth while to encumber this record with all of that data. My understanding is that the only issue here as to these South Florida rates is whether the rates on these particular commodities from Chattanooga and Montgomery respectively to South Florida are unreasonable. We have undertaken to show by these exhibits that, laying aside the question of how they may be constructed, whether on Jacksonville combination or on any other basis, the present rates are exceedingly low, as shown by the ton mile earnings thereunder, and further that the rates on the basis proposed by the complainants are entirely too low. That is our whole position on this subject (Rec., 755).

Exam. Waters: It appears to me if reasonable rates are prescribed it is not a matter of so much concern how they are made.

Mr. Burchmore: I think it is fair that I have an opportunity to bring out the facts, as this Commission suggests, but here it is asked to say that you shall substitute one scheme for another scheme, that hasn't anything to do with the amount of the rate itself, that is what you are asking for, because you are asking that you shall have a mileage [fol. 316] scale up to a point in Florida, and then beyond that regardless of the amount that that would produce, you want to substitute combination.

Mr. Gwathmey: May I ask whether you are representing the shippers in this case who ship from Montgomery or Chattanooga into Florida?

Mr. Burchmore: No, but I am very much interested in the principle that you are trying to put upon us.

Exam. Waters: Don't let's get too far afield on principles.

Mr. Burchmore: If there is not going to be any argument at all on one side of this case, I will not ask to make an argument, but if you are going to take up a record of arguments by Mr. Gwathmey and Mr. Cotterill as to why a mileage scale is to be put in, I ask permission to put in a few words of argument on the other side; if you will cut out all arguments on the part of other counsel, I will make no effort to make any argument at all (Rec., 756).

Mr. Cotterill: To the extent that I did overlap, I apologize to both the Commission and to counsel. My only explanatory comment is that I was seeking to avoid the realm of the historical situation of the Jacksonville System, just as Mr. Gwathmey.

(Witness excused.)

Mr. Gwathmey: As far as I know, that concludes the case for the carriers on the direct presentation.

C. R. Moffett was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

Mr. Moffett: As to my qualification, I will state that I [fol. 317] served with a number of Southern carriers in the traffic departments as Chief Rate Clerk and Commercial Agent, also the old Southeastern Freight Association, and for the past seven years in industrial traffic work.

I will offer Exhibits Nos. 220 to 224, inclusive, and with a view to hurrying ahead with this testimony, I will cut it very short, because I believe the exhibits are self-explanatory to a large extent.

Exam. Waters: The exhibits will be received if there is no objection (Rec., 757).

(The statements were thereupon received in evidence, marked "Intervenor's Exhibits Nos. 220 to 224, inclusive, Witness Moffett.")

Mr. Moffett: Dockets 17763 and 17764 attack the rates on gravel from Chattanooga to points in Georgia and Florida under Sections 1 and 3 of the Act, and bring into issue the rates on slag from Copperhill, Tenn., charging that Copperhill slag competes with Chattanooga gravel; that is true, and we claim that the Copperhill slag also competes with the Birmingham slag and the Montgomery gravel, and crushed stone produced at many points in Georgia, South Carolina and other southern states. The purpose of these exhibits is simply to show that the Copperhill slag has been discriminated against, and we have been unable to meet the competition at points in the territory involved. These

exhibits are self-explanatory to a large extent, and show conclusively that the Copperhill slag is being discriminated against, that is in the sense of preference and prejudice under Section 3 of the Interstate Commerce Act.

[fol. 318] The chief competition of course would be with the Birmingham slag, and the Chattanooga gravel, and also sand and gravel produced over at Fairmount and Bolivar on the main line of the Louisville & Nashville Railroad, then over on the old line at such points as Mineral Bluff and Whiteside, Ga., and possibly from the marble mills around Nelson, Tate, Bellground and Canton, Ga., what might be termed as crushed marble, and also from Ladd's, Ga., which is not shown on the map; it is close to Atlanta, on the Seaboard Air Line.

The shipments have been moving very largely on the old line and perhaps on the main line of the L. & N., to Atlanta or south; there have been some at Murphy, N. C., and a small tonnage into the Carolinas. They have not been able to market this slag to any extent on account of the differences in these rates. See Exhibit No. 223.

Mr. Walker: I want to object to it (Exhibit No. 222), in the middle of that page is a statement there dealing with costs, just an arbitrary statement without any basis whatever, and I move that it be stricken from the exhibit if the exhibit is received (Rec., 759).

(Thereupon there was argument between Mr. Moffett and Mr. Walker in which Mr. Gwathmey joined Mr. Walker's objection, with comments by Commissioner Lewis, and finally—— (Rec., 760).

Mr. Walker: I move that the statement be stricken from the record until we get a ruling on the exhibit.

Commissioner Lewis: I don't believe this thing has any weight whatsoever, it will not hurt this record for it to go in.

[fol. 319] Mr. Walker: It is a conclusion of the witness on a study made by Dr. Lorenz, of course.

Commissioner Lewis: I will rule it out, and you can make your objection, which will be noted.

Mr. Moffett: Do you rule the entire exhibit out?

Commissioner Lewis: No, just that part of it (Rec., 761).

Mr. Ribe: I object to Exhibit No. 221 unless the witness is qualified to testify as to the weights of the commodities he lists on that exhibit.

Mr. Moffett: They are generally accepted in the Tennessee district, some of those weights were verified through invoices and through other sources and records, and were also confirmed by a letter from the United States Department of Agriculture in Washington and the Road Department with slight variations, possibly 50 or 100 pounds in one or two of them, otherwise they are correct as far as any one knows, and all the contractors that I know of in our section use those weights.

Exam. Waters: That will be allowed to go in, and the objection will be noted.

Mr. Moffett: As long as he has brought that out, I want to say this, you will notice the Copperhill slag weighs 3,100 pounds to a cubic yard, which is 135 percent of the iron blast furnace slag, and that is a handicap that it must be sold under.

Now, as to Exhibit No. 223, in the two dockets, 17763, and 17764, in which Copperhill was brought in, they claimed that the rates were preferential of Copperhill as I see it, and prejudicial against Chattanooga, while just the reverse of that situation was shown; I am dealing with the situa-[fol. 320] tion south of Atlanta, I judge Mr. Cotterill and Mr. Porter will handle the I. & S. Case from Copperhill to Atlanta proper (Rec., 762). And from this exhibit you will note that the rates from Copperhill as they exist today are from 10 to 36 cents higher than the current rates from Chattanooga on gravel, whereas the short line distances in nearly all cases, with the exception of two or three more as noted, the short line distance from Copperhill is uniformly 21 miles less than from Chattanooga, Tenn.

Now, as to the last exhibit, 224, that exhibit is simply to show why the Copperhill slag can't go into the state of Florida. Tampa, Fla., is shown on the right there as representative of the Southern points, because large quantities of slag have been used in and around that territory. And where the slag rates are shown on this exhibit, the average distance to Jacksonville, Fla., from those points, that is except from Copperhill, is approximately 452 miles, and the average slag rate to Jacksonville from all those points is $1.78 per ton, as against the published rate from Copperhill to Jacksonville for beyond of $2.25 per ton. The distance

from Copperhill to Jacksonville is less than the average distance from the competing points, yet the Copperhill slag rate is 47 cents per ton greater on an average. Those conditions will work out about the same to Jacksonville for beyond, which shows conclusively that the Copperhill slag is discriminated against in entering the state of Florida.

That is about all I have to say in regard to that exhibit (Rec., 763).

[fol. 321] Cross-examination.

By Mr. Brooker:

The exhibit figures the mileage from Columbia, S. C., to Jacksonville, Florida, via the Southern Railway. As to whether the Southern Railway has a direct line from those points without using the Coast Line to Jacksonville I can't say; it is a traffic arrangement I am not familiar with; I know they publish it in their mileage scales and mileage tariffs on file with the Commission as a one line haul. Without checking it I can't say that the Seaboard's route is shorter than the Southern's. I worked the exhibit up hurriedly to get to Atlanta. I may say that I now notice that in cutting the stencil of this exhibit No. 224, the tariff authorities have been omitted, I don't know why, but I can give them to you from memory, with the exception of one tariff.

Commissioner Lewis: You had better read that in (Rec., 764).

Mr. Moffett: From Copperhill, L. & N. Tariff I. C. C. A-15338; from Birmingham, Glenn's Tariff I. C. C. A-331, from Montgomery, Glenn's Tariff A-494. From Elberton, Columbia and Pacolet, Southern Railway Stone Tariff No. 4, I. C. C. A-9979.

(Witness excused.)

G. D. Lott was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I am Secretary and Treasurer of the Palmetto Quarries Company, Columbia, South Carolina, and in this proceed-

ing speak for it, and also the Weston & Brooker Company, also of Columbia, and the Southern Crushed Stone & Gravel Company, of Park Hill, S. C., on the Southern Railway. [fol. 322] The Columbia quarries have been in operation for about 25 years and these companies produce and sell crushed granite or crushed stone. The plant capacities are, for Weston & Brooker, 25 cars per day; and for Palmetto, 25 cars per day; and for Southern Crushed Stone & Granite Company, 15 cars per day (Rec., 765).

Crushed stone and granite competes with gravel, slag, chats, and clay gravel. Our minimum price for crushed stone is $1.25 per ton f. o. b. our plant the past six months; our maximum price is $1.75 per ton. We cannot produce and sell our product at an average price of less than $1.50 per ton f. o. b. our plant. The competition of gravel and slag with our product is that the former are sold at much lower prices than crushed stone on an equal basis of freight rates so that both slag and gravel have a decided advantage in price. With respect to slag, even at the same level of freight rates, we are handicapped because of the lighter weight per cubic yard of slag. A given job requires less tons of slag than when crushed stone is used.

The gravel competing with our product originates chiefly from the Montgomery district, and its destination territory is South Carolina, Eastern Georgia, and Florida (Rec., 766).

The competing Montgomery gravel is destined to Charleston, S. C.; Savannah and Augusta, Ga., Jacksonville and many other points in Florida. We have lost contracts on which we have quoted prices on crushed stone at the points I have mentioned. The slag which competes with us originates in the Birmingham District and the destination is the same territory I named for the gravel competition. We have lost business to slag from the Birmingham District, at destinations of Charleston, Newberry and Orangeburg, S. C., Augusta, Savannah and Brunswick, Georgia, and [fol. 323] Jacksonville, and many other points in Florida. Newberry, S. C., is 43 miles from the Columbia plants. Our freight rate is 79¢ per ton; we secured an order on the city paving work at that point and had shipped some 15 or 20 cars when the slag shippers from the Birmingham District made a more attractive price, taking the slag rate into consideration, and took the job away from us. We were

forced to reduce our price below our average selling price in order to regain this particular order (Rec., 767).

Florida was once one of our best markets, but during the past few years we have shipped very little to Florida points, and what we have sold there has been at a premium. The Montgomery gravel and the Birmingham slag is being sold in large quantities at Jacksonville and other points in Florida. The sales representative of the Weston & Brooker Company at Jacksonville purchased 1,100 cars of gravel from one company in Montgomery in 1924, and an equal amount of more during ten months of 1925, our own sales representative at Jacksonville purchased at least that much or more. By premium, I meant they paid more for our product delivered on the job than they did for the gravel and slag. I have seen the proposed scale submitted by the complainants in this proceeding, and if the scale on crushed stone, slag and gravel is established it will greatly reduce our production and sale, because the low rates for the long hauls and the relatively higher rates for the shorter hauls will, when applied to the lower priced gravel from Montgomery and slag from Birmingham, make it impossible for us to sell our stone in even our home territory, and by that I mean within a radius of 50 miles from our plants (Rec., 768).

We shipped 110 cars to Florida during 1925.

[fol. 324] Cross-examination.

By Mr. Gwathmey:

I don't know that there is any objection on the part of the interests I appear for to the construction of rates into Florida on combination by the use of certain separate factors to and beyond Jacksonville.

By Mr. Walker:

I was talking about the shippers' proposed scale.

By Exam. Waters:

Q. How about the carriers' proposed scale?

A. I really haven't seen the carriers' proposed scale, Mr. Examiner (Rec., 769).

By Mr. Cotterill:

The approximate distance from Birmingham to Columbia, S. C., is 400 miles, and from Montgomery to Columbia I believe it would be a little greater. I said that the complainants' scale for hauls of 400 or 450 miles would eliminate us as a factor beyond 50 miles from Columbia (Rec., 770).

The rate from Columbia, S. C., under the shippers' proposed scale for a haul of 50 miles would be about 70¢ I believe. The value of our product ranges from $1.25 to $1.75. I believe slag prices were given here as 50¢ to 90¢. I don't know about the average price. With a price of 65¢ per ton on slag at Birmingham plus a freight rate of $1.70, the delivered price would be $2.35 a ton (Rec., 771).

Q. Your freight rate would be 75¢ per ton?

Exam. Waters: That is to where?

Mr. Cotterill: For a haul of 50 miles I think it is, or is it 50 to 60—I missed it one block, it is 80¢ for 50 miles, that leaves $1.50 per ton as your delivered price, I mean as a margin for your quarry price?

[fol. 325] A. Yes, sir.

Q. Now, you say you want more than $1.50 for your product?

A. No, sir, I said an average of $1.50.

Q. Well, if you want an average of $1.50, and that rate adjustment is such that you get it to that point, wherein would you be eliminated from it?

A. Beyond that we would be eliminated, would we not? Our distance to Jacksonville is lower than from Birmingham to Jacksonville.

Q. With a price of $1.50 f. o. b. your shipping point, plus your rate to Jacksonville, is your distance sufficiently less than the distance from Birmingham to overcome the price of the competing article that sells for only 65¢ per ton? (Rec., 772).

A. Well, I would answer that this way, for the past few years we have shipped very little anyhow into Jacksonville, and as I have already said, we once shipped a great deal into Jacksonville.

Q. Starting with a disadvantage in price of approximately one dollar per ton, is there any system of freight

rate construction that can possibly give you a distribution very far?

A. Well, I am not a rate expert, but I doubt that there is.

Mr. Cotterill: I agree with you.

Redirect examination.

By Mr. Brooker:

We can't exist unless we can make our material average $1.50 at the plant. On a given job within 50 miles of our plant, when crushed stone is used, they require more tonnage of that commodity than when slag is used (Rec., 773). [fol. 326] Even those we might by the use of the price of $1.50 make the same delivered price on crushed stone, we are at a disadvantage in regard to the weight of those materials.

(Witness excused.)

W. L. Smith was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Burchmore:

I am President of the Memphis Sand & Gravel Company, with headquarters in Memphis, where I reside. My company is engaged in the clay gravel business, located at Holder, in Northeastern Mississippi, shipping point Iuka. We have another plant in Middle Western Tennessee, near the Tennessee River, on the main line of the N. C. & St. L. Ry. We have another plant on the main line of the I. C. R. R., about 20 miles east of Paducah, Kentucky. That is also on the Tennessee River. The Iuka plant is on the main line of the Southern en route from Memphis to Washington (Rec., 774).

The Kentucky plant is on the Louisville Division of the Illinois Central, just out of Paducah at Gravel Switch, Ky. The capacity of our Iuka plant is about 40 cars a day; our Camden plant (Middle Western, Tenn., on N. C. & St. L.) is about 50 cars a day, and that of our Gravel Switch, Ky.,

plant is about 100 cars a day. From time to time we sell and load large quantities of gravel for railroad ballast, but aside from that use, the principal use or purpose for which our material is sold is good roads and streets and municipal purposes. We produce only the clay gravel; but no sand. All of our commercial gravel output, so far as shipments are concerned, is for railroad and street work (Rec., 775).

[fol. 327] The only other gravel we have is ballast; I didn't mention the tonnage or output of it just now. I am President of the Tri-State Road Material Association, which is an association of the gravel and sand producers in the Mississippi Valley for mutual benefit, whose plants are located in Mississippi, West Tennessee and West Kentucky. The Association's general objects are looking after freight rates before the Commissions and after the car supply and matters of mutual interest to members of the Association. There are quite a few members of the Association that produce washed gravel and washed sand.

Answering your question for some of the important producing places in Mississippi, with railroad location, there is Columbus, Miss., on the M. & O. R. R., and the Columbus & Greenville R. R., about the middle eastern edge of the State, there are four plants there, three of them are washed gravel plants and one clay gravel plant (Rec., 776). On the Frisco R. R., just as it enters the state from Alabama, there is a washed gravel plant; and there is one just inside the State of Alabama at Solgent, Ala., also on the Frisco R. R. On the Illinois Central as it comes to Birmingham en route to Chicago there is a washed gravel plant located at Golden, Mississippi, near the Alabama line; also another plant located at Spruce Pine, Ala., just inside the Alabama line. There are two plants located on the main line of the Southern Railway, one of which is my own, just as it enters Mississippi from Alabama, in the extreme northeastern part of the state, at Iuka. The other plant there is the Allen Gravel Company, with a capacity of about 25 cars a day (Rec., 777).

If you come from Montgomery direct over two lines of road, the Western of Alabama to Selma and the Southern Railway from Selma to Meridian, that would be the short [fol. 328] line; Meridian is about the first town of any importance in Mississippi. There is no plant at Meridian but

in the general vicinity there are four plants at Columbus on the M. & O. R. R., less than 100 miles away, and there are two plants located on the New Orleans & Northeastern R. R., that are about 85 miles from there en route towards New Orleans; that is, at Hattiesburg. There is a plant on the M. & O. R. R., a short distance south of Meridian, at Waynesboro. There is also a plant down there near Bay St. Louis, towards the southern boundary of the state, just off the main line of the L. & N., on a little short line (Rec., 778).

I don't think there is any considerable production and shipment of sand and gravel from Mobile, Ala. Brookhaven, Miss., is near the southern boundary on the Illinois Central's main line and that is a large producing point, both of clay gravel and washed gravel, and they also furnish a lot of ballast there. On the western side of the state, there is a large plant at Greenville, Miss., owned by the Greenville Sand & Gravel Company, and they have also a pumping plant that pumps gravel out of the Mississippi River. That is just washed gravel. They have three washed gravel plants at Memphis, also a river proposition, which do not produce *caly* gravel (Rec., 779).

Whether Memphis produces sufficient gravel for its own uses, depends upon the building program; to illustrate, about two years ago Memphis had an abnormal building program of something like $45,000,000.00, and during that period they brough- in gravel from Paducah, Ky. There are two large plants there that I don't believe I mentioned [fol. 329] —washed gravel plants—and they shipped some gravel in, quite a lot from Greenville and Golden, Miss. They also shipped in crushed stone from near Nashville, Tenn., just beyond the Tennessee River on the main line of the N. C. & St. L. They also got crushed stone from Williford, Ark., on the Frisco R. R., and there are one or two plants located on what is known as the Corliss Ridge; that is a line of hills that forms the demarcation, you might call it, of the Delta from the tableland.

In a very general way, the utility of clay gravel for use in road and street work is this: The base is prepared as in all of those construction propositions, and then the gravel is put down generally about 8 inches thick, and they put down about 4 inches of that in what we call the cement gravel, or the gravel that is sized, all of the large gravel being

taken out of it; that is rolled and generally speaking that gravel carries its dampness so that it sets up very promptly, and of course in a very large proposition they may have to use a little water, but it is a natural cementing gravel and sets up very quickly (Rec., 780).

The clay acts as a binder. Washed gravel is used when they are making cement or concrete roads. Along the Tennessee River and along the eastern portion of the State, there are a number of clay gravel and washed gravel plants. In that valley I think there are about 17 washed plants and about 15 clay plants, that is, in what we call the valley, running from my own plants on the Ohio River through to the Louisiana line. There are 12 washed gravel plants in Mississippi and 10 clay. Normally, the selling price of clay gravel is 35¢ to 50¢ per ton at the plant. Now, in specially prepared cement gravel, that runs up as high as 70¢ (Rec., 781).

[fol. 330] When you get down to where you overlap into competition, it is according to how hard the times are and how much your competition is; those are things that are based like all competitive business. From my experience and knowledge of the business, the representative normal price on washed gravel and sand for Mississippi Valley runs about 65¢; sometimes, as in the cases that you spoke of a while ago it will get down as low as 50¢ per ton. Generally speaking, the two sell for about the same price. I suppose there are exceptions to all rules. You take in the river gravel plants, where the producers have their barges on each side, and where they have an excess of sand for which they would not have a sale, all they have to do is just to move the sand barge and let it flow back into the river; there is no extra cost of removal of that sand, as would be the case in a land operation, where you have to bring it all to your plant and either have to ship it or dispose of it otherwise (Rec., 782).

We ship a large quantity of clay gravel from our Iuka plant in Northeast Mississippi on the Southern Railway, to destinations in the State of Mississippi. Most of that tonnage moves from Iuka to Mississippi destinations by interstate routes. One of the principal interstate routes used on that tonnage is the Southern Railway, that runs from Iuka direct west to Memphis. That is the main line, where it has a terminus, and there we ship it down to what is

known as the Y. & M. V., which of course is a part of the I. C. R. R.; and some down the I. C. R. R. into the Delta (Rec., 783).

We have quite a large business down into the Delta, where there is no macadam; it is an alluvial country, of course formed by the overflow. There is no road gravel produced beyond Memphis and there is a large tonnage from Iuka by the Southern Ry. to Memphis and the Y. & M. V. to the Delta (Rec., 783).

[fol. 331] The interstate rates by that road are practically the same in some cases as the intrastate rates from Iuka to the same Delta destinations; in other words, if we go through Memphis down into the Delta down much past Clarksdale, Miss., we then run into the intrastate rates that come around by way of Corinth and across the G. & G. Railroad into the Delta, which runs over to Greenville. In some cases the interstate routes are longer than the state routes.

Q. Except for substantial differences in mileage, would you say that the rates from Iuka by the interstate routes to Memphis are substantially on the same level or lower than the intrastate rates?

A. Practically so to the Delta country.

Those interstate rates have been established voluntarily by the railroads for years and years; they were built up from General Order No. 28 and the following increases after that (Rec., 784).

We use the interstate route by way of the Southern Railway to its junction with the Gulf, Mobile & Northern, just north of the Mississippi State line thru Middleton, Tennessee. With few minor exceptions, the interstate rates by that route are practically the same as the intrastate rates to the same destinations; there may be one or two instances where there would be differences.

Mr. Burchmore: We ask your attention, Mr. Commissioner, to the fact that neither the Southern Railway nor the Y. & M. V. Railroad were named as defendants in the printed petition, and that the complaint does not attack the interstate rates from Iuka, Miss., to Mississippi destinations, but is limited in express language to the intrastate.

We ship gravel from our Camden plant to points in

[fol. 332] Mississippi and the rates in effect (Rec., 785) are on the same level because Memphis is used as a competitive point and from there on, of course, the proportion is exactly the same. Camden is on the main line of the N. C. & St. L. If a producer of gravel at Montgomery shipping to a point in Mississippi, I should think with the single line haul of the M. & O., which is about 180 miles to Columbus, the first producing point, the direct line from Montgomery would probably be when we strike the center of the State. You understand that the hill lines in Mississippi are not the prosperous portion of the State. The Great Delta of Mississippi is the bulwark of that State. In endeavoring to reach the markets of Mississippi over that route, the Montgomery producer as he enters Mississippi would run right jam into four plants at Columbus, whose normal production I should say would be around 400,000 tons. I imagine, however, it would whatever they wanted to make it because there are whole fields of it there and it just depends on how many shovels and washing plants are put in (Rec., 78[illegible]).

That section of Mississippi has a large potential supply there but I can't say how it compares with the Montgomery area. The next road by which Montgomery would enter Mississippi would be, going north, through Birmingham and up the Frisco past Amary, Miss., and as Amary is right on the line half way between Birmingham and Memphis, they would run into two gravel plants, one washed gravel and one clay gravel. Montgomery might also enter Mississippi by coming up to Tuscaloosa on the M. & O. and down the A. G. S. to Meridian, or over the two-line haul of the Western of Alabama to Selma and over the Southern from Selma to Meridian; that would be the most direct western route. The A. & V. is an important link in that route from Meridian to Vicksburg (Rec., 787).

[fol. 333] Going into Mississippi through the southern end Montgomery would use the L. & N.'s main line through Mobile, coming out by Gulfport in the Coastal section. By all of these routes, the Montgomery product would pass several producing centers on the border of Mississippi; the four Columbus plants would be less than 400 miles away; the two Hattiesburg plants would be about 85 miles away. Of course southward towards Hattiesburg, the mileage would naturally be reduced, and as I understand the A. & V.

is not named in this complaint they would run into Brookhaven and the Komard plant near Jackson and the Crystal Springs plant right at Jackson. The Columbus & Greenville Railway is one of the intrastate railways of Mississippi and I think there are important gravel producing points on that road. I think there is a small plant at Donnelly on the C. & G., and of course the western terminus of the C. & G. is at Greenville, where they run into a big washed gravel plant at the Mississippi River (Rec., 788).

The New Hope plant and also the three washed gravel plants at Columbus are within the switching limits of the C. & G. with a single line, but when they strike the Y. & M. V. they would take the two-line haul.

I have had a great deal of experience in building railroads and my brother and I built over 800 miles in Mississippi. We built 2000 miles of railroad during our construction (Rec., 789).

In 1898 we raised and lowered the grades of the I. C.'s main line from Jackson, Miss., south and going out on the Y. & M. V. to Yazoo City. Afterwards we double-tracked the I. C.'s main line from south of the Ohio River to New Orleans. We built over 100 miles of the Delta railroads in the Mississippi Valley and 50 miles of the Gulf & Ship Island into Jackson, and another 50 of the Great Northern [fol. 334] road into Jackson, Mississippi. We built 400 miles of what was known as the M. J. & K. C., now known as the Gulf, New Orleans and Mobile. From this construction work I think I have acquired some considerable knowledge of the topography of the country and the character of the railroads with reference to their grades, curves, and weight of rail. I also built 75 miles of the A. B. & A. R. R. in the Georgia territory. That is the only one in that particular section that we built. We built, raised and lowered the grades and widened the banks on the L. & N., and we built roads for the Southern Railway (Rec., 790).

I have also worked for various railroads in different parts of the country in reconstruction or regrading. The I. C. in 1898 began to readjust its grades. The lines we built through the Delta, and over which their main traffic passes today, is based upon 26/100 of one per cent, practically a water level. The maximum engine tonnage pulled by the I. C. through that country is 8400 tons to the train, which means it can pull over 150 cars loaded through that

country, all they can hang on to. Within the past three weeks I had to wait for a freight train in the Delta and it carried 110 cars. Now that same engine in the Knoxville Division of the Southern Railway will pull about 1400 tons, or, if she is what is known as a super-powered engine, she would increase that about 20% (Rec. 791). In other words, one engine and one crew will pull in the Mississippi Valley section of the I. C.'s main line three times the tonnage of any other railroad that has a maximum grade of 1%, and most of them in the southeast run over that.

The main line of the L. & N. on Sand Mountain going north out of Birmingham until very recently was 2%. It was reduced when they made that cut-off there. I made a [fol. 335] bid on it and missed it, and of course to do that had to look it over and I learned something about it.

When I have spoken of the I. C. I have coupled the Y. & M. V. and I. C. together. I also built what is known as the Yellow Dock, named from the Yazoo Delta, and that is the road they pull all of their main line freights through today, their low level road, and is the one I mentioned when I spoke of 26/100 of 1%. They are the portions of what we call the main line, what we call the Granada line, that will run a little heavier grade than that (Rec., 792).

I am not quite familiar with that but think it is about 8/10ths. The main line of the I. C. has gravel pits along it, at Crystal Springs and Brookhaven; there is quite a large tonnage; the I. C.'s roadbed is largely ballasted all through Mississippi with gravel from Brookhaven.

In comparing the topography of the Mississippi Valley with the Southeast, in the matter of grades, I will say that after a rain in the Delta it takes at least two days for the water to get off the ground so the dirt itself can be handled. It was necessary when we were constructing those Delta roads to go sometimes at a right angle for a mile, and we would not get over a two-foot drop in the ditch to take that water off (Rec., 793).

The country is absolutely flat, built up from overflows and deposits of silt. Of course the operation of a road like that would be materially less than that of a road in the hill country, but the cost of construction of a road through a level country where you don't run into rock and other hard materials does not run over 50% of that of a road in a mountainous country. There are miles of road

right in the Birmingham district that cost nearly $100,000.00 [fol. 336] a mile, which is pretty high, while the Delta country road would cost you about $20,000.00 to $25,000.00. Those are simple facts (Rec., 794).

These instances are based of course on the grades of the road. Take in that Valley section, we use a basis of not more than 3/10th of 1% against the roads that go east of that, and nearly all of them have a maximum of 1% on their main lines. Yes, I have seen the engine tonnage ratings and they confirm my general statement as to the relative conditions.

Q. If the freight rates within the Mississippi Valley and the freight rates within the Southeastern Territory and the Carolina Territory and the Florida Territory, etc., if they were made with reference to the operating conditions and transportation conditions as deflected by grades and curves and engine tonnages and tunnels and matters of that kind, would there in your opinion, from your experience, be a uniform level of rates throughout this territory?

A. I want to say that the level of rates most certainly ought to be in favor of the level country. In other words, if the rule of three should be applied to give the same rates, level of rates through the mountain and hill country that you do the level country, Henry Ford would not be a circumstance to what the Valley roads would finally show in profits; in fact, with the present rate level, the Illinois Central Railroad is the most prosperous road in the United States, and its rates are builded upon the present basis and have been for many, many years, in fact all those cities along the valley country have been builded and have prospered, and those railroads have built into them based upon thos- conditions, just the same as the mountain country, and both have prospered along in about proportion it seems to me with the balance of the country. I am reasonably familiar with conditions as to the general movement and distribution of sand and gravel from different points in the Mississippi Valley (Rec., 796).

[fol. 337] Examining Exhibit No. 20, Witness Ribe, there is no substantial movement from Memphis to the towns named therein excepting an occasional structure; I should say the town of Perry, Tenn., would build one or two buildings in a year, most all of them of wood; Pinson, Tenn.,

Henderson, Finger, McMarry, Vessel Springs, Selmer, are towns of not over 200 people, or under, and you can imagine what the construction would be. The movement from those towns to Memphis would be all for concrete construction. There is no movement of any consequence from Memphis to the points in Mississippi named in that exhibit, because there are along the M. & O. and are much closer to the shipping points of washed gravel and sand from Columbus and Golden, Miss., and from the Tombigbee plant on the Frisco lines. Those lines would get their road gravel either from our Iuka plants or from Columbus, according to distance because that is clay gravel, whereas Memphis has washed gravel. The available supply of road gravel is the Mississippi supply for those towns (Rec., 797).

Looking at Exhibit No. 21, with reference to rates from Memphis, published by the Southern to points on their lines in Tennessee and Mississippi, they are about the same character of town, and there is very little movement from Memphis to those places. As you go along the Southern Railway you get into the crushed stone district, that is just into the edge of Alabama near Muscle Shoals, into the Golden Granite Company's plant and the Spruce Pine plant. Fully two-thirds of that list you gave me would run into those plants that would be more available. They would run into the Tombigbee plants in Mississippi at Amary. In my opinion, there is no substantial movement from Memphis, and those Tennessee and Mississippi points named in that exhibit (Rec., 798).

Practically all our rates are built upon specific rates. Of course, blind sidings and points like that where two roads [fol. 338] are built, we ship prepaid to the nearest siding to the work.

By Exam. Waters:

Q. Do you believe in a mileage scale of rates?

A. No, sir, it is not applicable to that section of country over there, I don't think it would be practical.

Q. Why?

A. Well, we go into, we take these towns like Memphis, and they come in there on those specific rates, I am just making one illustration, as I base it on the competitive basis, and Memphis has about nine main line roads coming

in there, and this material comes in there from varying distances, and those rates have all been based upon a competitive basis, and those base points have been used for years to carry that material down into the Delta country where they have no macadam materials that they need for building their roads, I would say this comes down in that section of country in trainloads, and the same thing occurs all down the line. Our business moves generally speaking north and south in that section, there is very little tonnage of sand and gravel I would say that moves east of the Mississippi line over into the hill and mountain sections of Alabama and East Tennessee, but we do produce sufficient materials in that valley (Rec., 799).

By Mr. Burchmore:

Q. Bearing in mind the limitations of these cases in respect to the roads in Mississippi that are not named as defendants, and absence of averments attacking the interstate rates into Mississippi, nevertheless I ask you what would be the effect of imposing the full measure of the carriers' proposed mileage scale applied to the actual distances from each particular point of origin to each destination in this territory, in lieu of the present rates that are in effect interstate and intrastate?

A. It would materially increase those rates, and to illustrate, the state of Mississippi as I understand is today [fol. 339] something like ten millions of dollars in debt, and those people down there are not any too prosperous, the delta country excepted, and those people are trying to build their good roads, they don't build the cement costly roads, and if you put these high rates up——

Mr. Walker: I think this is immaterial, I have no objection to it, if the Commission wants to hear it, but I expect we could get people all over the country to testify to being hard up (Rec., 800).

Mr. Burchmore: It is all immaterial to the issues, because there is no issue as to the rates into Mississippi from points in Tennessee, and there is no issue as to the interstate rates from the Mississippi plants to Mississippi destinations and no issue as to the rates of the Columbus & Greenville R. R. or of the Southern Railway and the other roads that are named as Defendants, and yet you have re-

ceived numerous exhibits and considerable oral testimony over my objection addressed to that situation.

Commissioner Lewis: The interstate rates into Mississippi are attacked, are they not?

Mr. Burchmore: They are not, except from Chattanooga and Montgomery, and they are attacked as excessive in violation of Section 1 and as discriminatory in violation of Section 3, and as preferential. I should like the witness to continue this answer, since he is facing the situation (Rec., 801).

(Adjournment until 9 a. m. Feb. 20, 1926.)

Mr. Moffett: You will recall last night we failed to put in the Southern Railway Tariff on Exhibit No. 224, Witness Mofftee. That tariff number is Southern Railway I. C. C. A-9979. That will save additional work later on.

[fol. 340] W. L. Smith was thereupon recalled as a witness and, having been previously sworn, testified as follows:

Direct examination continued.

By Mr. Burchmore:

There is neither need nor demand for these rates in the Mississippi Valley and if they are put into effect they will cost an approximately average increase of 40% in the rates in that section. This will be a great penalty and will seriously affect the industries in the Mississippi Valley which have been builded. The money in those industries amounts to a great deal and in most cases the entire capital of those who are interested in those industries will become obsolete by virtue of the fact that they would be either badly located or the business would be so restricted that they would be no longer profitable (Rec., 802).

The industries in that valley are now supplying the demands without the need of other materials coming in. In fact, those industries are not operating on more than 40% or 50% capacity. If these rates become effective, it would reduce the building of good roads in the valley by just that much as they have only a limited and fixed amount

available for good roads, which revenue is created largely from the automobile tax on gasoline, and this is added to by federal roads by whatever proportion the state receives from the federal government. But the state's revenues are gradually being absorbed more each year in the maintenance of those roads if it is their contract to maintain good roads when finished. There is a large use for gravel in maintenance that is growing each year. I would say that my Camden pit today is running on 50% of its output for maintenance work. In my judgment, over 80% of the gravel moved is now used in the construction of good roads and streets in the smaller municipalities and the outlying streets in the larger ones. I gave that percentage [fol. 341] representing the Mississippi territory as a whole (Rec., 803).

Unfortunately, the State of Tennessee is known today as the mud state. There are about a dozen main line highways projected and proposed to pass through Western Tennessee due to the fact the only highway bridge south of St. Louis is at Memphis, and so such highways as the Robert E. Lee Highway, the Bankhead Highway, the Southern National Highway, the Ozark Trail Highway, the Jefferson Davis Highway, the Mississippi Scenic Highway, and the Memphis to Bristol Highway are all centered there in order to cross the river en route east and west. Our Chamber of Commerce handles about 30,000 visitors annually passing through Memphis en route by motor by giving information. This I know by having been chairman of my Chamber's Good Roads Committee (Rec., 804).

Yes, sir, the states of Mississippi and Tennessee do levy a gasoline tax, Mississippi has been 2¢ and there is a proposal pending to increase it to 5¢. I said the Mississippi state debt was $11,000,000.00 but have since been told it is $17,000,000.00. Tennessee levies a 3¢ gasoline tax in addition to its license or automobile tag tax. The taxes stated are in cents per gallon of gasoline (Rec., 805).

Twenty-five years ago Colonel Ed. Russell, former Vice-President of the M. & O., was the daddy of the low rate system on gravel in the Mississippi Valley, and he stated on the platform many times that he thought the only way to get good roads in our section of the country was for the railroads to put in very low rates, and that so far as the M. & O. was concerned, he proposed to and did haul gravel

free from the pits located on the M. & O. at Tamms, Ill., 40 miles north of Cairo, across the Ohio River and down into Mississippi at very low rates, I said free, to his depots for the purpose of paving immediately adjacent to the railroad stations, and at the same time demonstrating the value [fol. 342] of paving that section of the country. He stated that the railroads ought to be glad and he would be glad to haul the good roads material at cost. For 25 years that policy has obtained with the M. & O. and the rates from Tamms were not changed until January 26, 1926, which looks like just at the preparation of this case.

I am the principal owner of the business of which I am President and so have a very large personal interest in these proceedings (Rec., 806).

No, I don't pose as a rate man, I simply know the general situation and think I have a fairly accurate knowledge of our approximate rates from our various pits and competing pits to various destinations. I know the rate from our different pits to Memphis and within a cent or two I think I know the rate from our pits to a given section of Mississippi, but I could not give the tariff authority (Rec., 807).

In my commenting on Mr. Chadwick's testimony that the M. & O. voluntarily established interstate rates on these road building materials entirely apart from the history of the intrastate Commission rates, as I understand it, they were established a long time before the intrastate rates, I will say before 1912.

Cross-examination.

By Mr. Chadwick:

When I said the M. & O. had voluntarily established lower interstate rates than the Mississippi intrastate rates, I will illustrate by your rate from Tamms to Meridian, Miss. I may miss it a few miles, but it is my recollection that it is about 380 miles, isn't that correct?

Q. No, it is about 390 miles.

A. I got pretty close to it. Your rate was established a long time ago at $1.08. Your rates to Columbus and West [fol. 343] Point, it is probably 90 miles less, were 97¢ for a long time, even though the gravel pits were developed at Columbus on your line, I would say approximately 10 years

ago and you still have maintained your Illinois rates. I want to say I think it is very laudable for a railroad to protect its own industries and these industries were on your line at Tamms, Ill. (Rec., 808), and through your own efforts have established these industries and caused them to exist a long time. In my judgment, had you taken out those rates, you would have seriously affected the business of those industries. The fact of the matter is, it is now impossible for them to go into that section but the development of so many pits in the Mississippi Territory, notably at Columbus on your line, has automatically shut those pits out because of the relatively lower rates due to the short distance hauled.

Our rate was 97¢ to West Point. Those were the rates I referred to as having been voluntarily established by the M. & O. on a lower basis than the Mississippi intrastate rates. No, my proposition was the operation of all clay gravel plants for commercial and ballast purposes and sell practically all of it to the highways and municipalities, and it moves in practically train lots (Rec., 809).

I should have modified that; for instance, materials going to the Delta country are generally brought in from at least two sources and I should say there is half a trainload probably from two of our places that would come in there a day. They go south in a trainload. This washed gravel is occasionally used on these clay gravel roads where they find they have a big advantage in rates. Then they get the clay nearby and distribute a certain percentage of clay on this washed gravel, and take something like a harrow and attempt to artificially mix it. This is done occasionally, not generally, it is the exception rather than the rule. It is used almost exclusively on concrete work (Rec., 810), concrete [fol. 344] pavements, bridges. I don't mean to say there are no cement roads but I do mean that the concrete roads in our section cost on an average of $40,000.00 a mile and the gravel roads on an average of $12,000.00 a mile. They literally can't build concrete roads because it would bankrupt them, that is all (Rec., 811).

(Witness excused.)

W. H. RUCKER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Burchmore:

I live at Itta Bena, Miss., on the C. & G. R. R., 100 miles on an air line south of Memphis in what is known as the Yazoo, Mississippi, Delta, and at this time am secretary of the Tri-State Association. I am not at this time engaged in producing sand or gravel but did so for several years last past. My present interests and activities are with farm lands, raising cotton, with some land rented out, and I have interests around my own town and through towns in the Delta. I am in the Chamber of Commerce of my city and think I am very familiar with the production and distribution and uses of sand and gravel in the Mississippi Valley and the Delta country (Rec., 812).

For several years I had a pit which I leased from a branch of the M. & O., now the Columbus & Greenville, at Donnelly, Miss., which is just out of the Delta. Later I opened what is now the New Hope pit at what the M. & O. calls Rucker's Switch, 5 miles east of Columbus on the Montgomery Division of the M. & O. I sold out part of my interests in 1922 and finally in 1924. The largest year in the history of the New Hope plant was 1924 with a production of about 300,000 tons, or about 6,000 or 7,000 cars, as they usually run, more likely 7,000 cars. I heard Mr. Smith's testimony concerning conditions in the Mississippi Valley and generally [fol. 345] speaking think he testified according to my own knowledge and understanding of conditions (Rec., 813).

I might add something I think I didn't state; the Delta in which I live is an alluvial country, somewhat like the prairie regions of Illinois. We have there about 7,500 square miles of territory, approximately as large as the entire state of Massachusetts, that does not have a pound of road material, as far as I know; it all has to be shipped from long distances where there are large deposits. It is a very flat country and needs highways more than any other part of the state as all prairie or alluvial countries do.

Mississippi is almost exclusively an agricultural state. The last census gave us about 1,700,000 people, and for

some reason we have never developed any manufacturing industries; have no mills, coal, minerals or ore of any kind; consequently our people have to be an agricultural population (Rec., 814).

We have no large town, the largest we have are Jackson, our state capital, and Meridian, neither of which I think exceeds 25,000 people, they would be mere villages to any other state, like Illinois and Massachusetts. There has been organized in our State a State Chamber of Commerce several years ago, and little local Chambers of Commerce, one in our own town of about 2,000 people, we have been trying to bring about movements that would better these conditions and diversify our crops in the way that the Federal Agricultural Department and other influences have been endeavoring to induce us to do, we have had occasion to go into those things a good deal. I was surprised to find that the little state of Massachusetts, about as large as our Delta, only one-fifth as large as the state of Mississippi, has practically thirty times our wealth; the state of Illinois has 25 or 30 times our wealth; the state of Indiana has perhaps [fol. 346] 15 times our wealth; I have an idea that the county in which Detroit, Mich., is located, on account of its great manufacturing industries, making of automobiles and so on, could probably buy the state of Mississippi. I am pretty sure Chicago could buy it several times over. These matters I have been discussing give us a large area and a sparse population; much of it rather a thin agricultural soil, that is forced to carry the burden of a great many miles of highway construction and maintenance (Rec., 815).

If the section is to be developed it needs good roads. Some of you may know that the Delta in which I live, with some similar sections in Arkansas, probably furnish the bulk of the fine staple cotton of the United States and that is very much in demand for imitation silks and for fine goods generally. The section needs good roads but it is not financially situation to carry a heavy burden for road construction. Just before the close of the war I recollect the federal government discovered the great need of highways and promoted a highway convention at the Chiska Hotel in Memphis. I was a delegate, and that was the beginning of the general highway movement in Mississippi. At that time we laid out highways such as the one parallel to the greatest railroad in our state, the main line of the I.

C. There are many stretches that have not been completed and probably won't be for several years. (Rec., 816).

Congressman Humphries got about $50,000.00 from the federal government just before that which our county supplemented and started an east and west highway from our town to Greenwood and beyond. We hoped to be able to go to West Point and Columbus and on to places like Birmingham and so have people come through the state and see it and advertise our opportunities. The greater part of that east and west highway is uncompleted because the people are unable to raise the funds to hard surface the roads. [fol. 347] Up to a year or two ago we had large areas in the most fertile soil in the county in which I live that we could not get people to live and raise cotton on, and two years ago our county succeeded in running a cheap gravel highway into that section, with the result that last year that section was full of people (Rec., 817) and produced some of the finest crops of cotton for the entire Delta area (Rec., 818).

The cost of building a gravel road now, due chiefly to the raise in freight rates, is something like three times what it was when we began to build several years ago. Depending on the width and thickness of the gravel, I should say from 70 to 100 cars of gravel was used in a mile of highway. I am speaking of clay gravel. There is very little construction of concrete highways in Mississippi (Rec., 819).

Washed gravel is used to a very small extent. There is little building with concrete; of course we build some concrete streets, a small concrete building occasionally, a few churches, and then it is used in such hard surfaced roads as are built now, like in Haynes and Washington Counties, they have a few miles of concrete highway 9 feet wide with gravel shoulders. With those exceptions there is very little concrete work being done in our state.

I think the establishment, both state and interstate, of the carriers' proposed uniform mileage scale would either check almost entirely or very largely our highway construction, except in the most prosperous sections, or it would add a very heavy additional burden to the people who now have all they can bear, many of our lands in the Delta paying from $2.00 to $5.00 an acre tax. I believe it would substantially curtail the program (Rec., 820).

Depending on the kind and location of road, that scale would run all the way from $1200 or $1500, in some cases $2500, additional cost per mile of highway. There is prac- [fol. 348] tically no substantial movement of gravel from states east of Mississippi to Mississippi for road building, except from Spruce Pine in the northwestern corner of the State, which has a specific rate into Memphis that enables it to ship some washed gravel and sand when the local plants are not able to supply it. I think the adoption of rates on the mileage scale as proposed would completely stop all movements from Alabama into Mississippi.

Cross-examination.

By Mr. Chadwick:

When I said the cost of roadbuilding had been generally increased in recent years because of the increase in freight rates, I had in mind the period since I was engaged in the business back in 1916 (Rec., 821).

My recollection is I shipped in 1920, when I opened the New Hope pit at Columbus, gravel to Greenwood and Itta Bena for 50¢ a ton, while now it is 94¢ a ton to Itta Bena from the pit, a distance of 122 miles. It was in 1921 the other pits became dissatisfied with my rates and we had a revision at Jackson which put them upon our present level, that was when the general reduction was made in the I. C. rates but resulted in an increase in M. & O. Rates (Rec., 822).

I don't think there is any movement of sand or gravel other than the one I mentioned from Spruce Pine into Mississippi. I don't think there has ever been any from Montgomery into Mississippi. I don't see how the movement could continue with an increase of about 45¢ a ton, as I recollect the proposed rate. That opinion is not altogether upon the assumption that the rates in Mississippi will remain as they are. Remember that practically all of the material that goes into Memphis is either produced in Memphis or is interstate, coming from Iuka, Spruce Pine and Greenville (Rec., 823). There is a great deal of [fol. 349] washed gravel and sand shipped into Memphis and a great deal of it is taken out of the river. The opinion I gave you is founded on the fact that Spruce Pine now has a specific rate of $1.13 into Memphis and on a combination

rate it would enable them to get into the Mississippi Delta, where there would be the greatest demand for their material, and this rate would make such an excessive increase that the Mississippi River and wayside pits somewhere near there will have to supply the material. The New Hope plant has a capacity of 75 to 100 cars a day and is a washed gravel proposition (Rec., 824).

I am familiar with the movement of washed gravel which is used in concrete work. In the construction of a concrete road that material would move in 8 or 10 carload lots a day. Around Columbus it is common for those plants to send out 18 to 20 cars each. In constructing a concrete road I think the contractor would use less washed gravel than clay gravel because they would not put it over 5 inches thick, where the ordinary clay gravel is laid as thick as 10 and sometimes 12 inches in the alluvial soils. The contractor would receive more cars of the clay gravel than of the washed gravel (Rec., 825).

(Witness excused.)

Mr. Burchmore: That will complete the evidence of the Tri-State Road Material Association, if I may make this explanation, that there were statistics and other matters that we had in mind producing here, that are covered by Mr. Brooker's exhibits, but he is appearing for other interests, and he shows the information in a very complete way. Now, on this description of the railways in Mississippi, I want to explain that in rebuttal on Exhibits 17, 26 and several others of the Complainants' exhibits, I intended to point out through this witness that the movement from [fol. 350] Mississippi origin points to the destinations there shown would be over other railroads and for short distances, thus rebutting any Section 3 showing. Now, if I may have a reasonable latitude of pointing out in the argument what the railroads would haul from points that are already named in this record, I would not have to prove that, it is simply a fact that you might say you would take judicial notice of. For instance, what I have in mind is that from Hattiesburg to points south, the movement is over the Gulf & Ship Island Railroad for distances of about so many miles, which you can see by looking at the map, whereas from Montgomery it is via the Louisville & Nashville Railroad down there.

Commissioner Lewis: I don't think you will have any trouble on that.

Mr. Burchmore: Then we rest.

B. C. Milner was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Price:

I am Assistant State Highway Engineer and act as producing agent for the Highway Department of Georgia. Georgia has 450 miles of gravel roads and about 400 miles so far of hard surfaced roads (Rec., 827).

Materials generally used in constructing the hard surfaced roads are crushed stone, slag, and washed gravel, which materials come in direct competition with each other. In our clay gravel roads just the clay gravel or chert, as we call it, is used. In a sense, crushed stone and washed gravel and slag competes with this clay gravel, as where we put down a penetration road or a road with an asphalt foundation, we can use crushed stone or slag for the base. Clay gravel does not come in competition with those [fol. 351] materials in constructing hard surfaced roads except as a base. We can only use washed gravel for one purpose, and that is the construction of a temporary road or base for hard surfaced roads. We can use slag and crushed stone as a base under those same roads (Rec., 828).

In 1925 we used 49,600 tons of crushed stone, 43,600 tons of slag, 70,000 tons of washed gravel, 136,000 tons of clay gravel, and 142,00- tons of sand. The sand is used for both roads and bridges. It takes machinery to put down a hard surfaced road of those materials, washed gravel, slag or crushed stone (Rrec., 829).

The clay gravel roads, however, are just dumped and spread, so we can handle three times as much clay gravel on a contract as we would the other materials during the day. We have handled as much as 15 or 20 cars of clay gravel per day. The largest amount of washed gravel we have used I guess is shown in Coweta County, where we used as much as 8 cars a day. The biggest portion of the

State Highway Department's program is for grading (Rec., 830).

The tonnage of stone we are figuring on is about 65,000 tons and 50,000 or 65,000 tons of slag, and 85,000 tons of washed gravel, and 170,000 tons of clay gravel and 180,000 tons of sand. A part of that sand goes into bridge construction, which is also highway work. Yes, our estimates show we expect to use twice as much clay gravel as washed gravel, and twice as much sand as washed gravel (Rec., 831).

Our price for clay gravel is approximately the same, that is, the average price. We have paid 20¢ for sand and up to 50¢ at the pits, all prices are pit prices, with an average of about 35¢. Clay gravel is 35¢ average and our average on washed sand is 60¢, and on slag 85¢ at the crusher, and crushed stone is $1.25. The range on stone is from 95¢ to $1.35, and the majority of the slag that we use is 85¢ with a 5% discount for prompt payment, while for washed [fol. 352] gravel the price is 60¢, although we got a few tons at 50¢ but the shippers failed and didn't perform their contract (Rec., 832).

Yes, we purchase river sand from Montgomery. There is no washed gravel or slag produced in Georgia so whatever we purchase must be bought out of the state.

Cross-examination.

By Mr. Gwathmey:

The Department's contracts are made on the basis of competitive bidding. My observation is that we have never had any material variation in price on washed gravel (Rec., 833) except the order we had placed at 50¢ where the shipper failed to ship it; we have paid 60¢ for gravel except a few cars. The slag ran through the year 1925 at 85¢ and there was very little competitive bidding in slag. Eliminating the slag there is not a substantial difference in the prices quoted by the different competing bidders. I am somewhat familiar with the sources from which we get these supplies. Yes, there was one instance of the kind where the Department cancelled certain contracts for clay gravel (Rec., 834). The only cancellation I know of is the one at Ellenton, S. C. All of the washed gravel, and I should say 50% or 60% of the sand, the Department has

used since April 1, 1925, has come from out the State. I would not say there had been any particular change in the movement of these different commodities since April 1, 1925, from points within the State as against points outside the State. We used very little of this material in 1925 prior to April 1 (Rec., 835).

Our department begins operations about April 1st and our shipments continue right on until fall. The ranges in value on these commodities that I have given were based on 1925 prices. We have used a good deal of sand from Montgomery. I don't know accurately but can state approximately that the amount of money available in Georgia, both [fol. 353] state and county, for the 1926 road construction, is about $8,000,000.00 in sight (Rec., 836). And that is the state alone. Bond issues recently approved approximately $16,000,000.00 but could not be available during 1926 because conditioned that the federal government and the state would put up three-fourths of the cost of construction, and of course the state and federal governments haven't that much money to match the county funds for 1926. It is available when the state gets the funds, and the Governor has called a special session of the legislature to consider this question.

By Mr. Ribe:

The tonnage figures I gave represent the material purchased by the Department for all construction, both by the Department and the contractors.

By Mr. Brooker (Rec., 837):

And the prices I gave are for materials entering into highway construction and not building construction or other works. No, range prices of 20¢ to 50¢ with an average of 35¢ doesn't apply to clay gravel. There is no range on clay gravel. Our price for that is 35¢ flat. Wherever the Department purchases materials it pays the freight. The Department is governed in placing contracts by the amount of freight rates or differences in freight rates from the different shipping points (Rec., 838).

The Department is governed by the delivered price of the material. Where there is a difference in freight rates we favor the low point of course. The Department builds

highways and also lets contracts to build them, and the counties build some of them under contracts. I don't know why Georgia didn't get in 10¢ sand instead of paying 35¢. We have bought a good deal of sand from Montgomery but we never bought any 10¢ sand. We have used a great deal of it in our construction work; the Department didn't pur-
[fol. 354] chase all of it, some was bought by contractors and it is possible they bought it for 10¢ a ton but we did not (Rec., 839).

By Commissioner Lewis:

Q. From the point of view of a constructor or designer of roads, and superintendent of construction, does the factor of the weight of these different materials enter into your calculations at all?

A. Oh, yes; stone for instance weighs more than sand; our work, our contracts are always let by either the square yard or cubic yard, and if we have got a material that weighs heavy, of course it is bound to enter into the cost of construction as compared to one that is a lighter material that will answer the same purpose. There is a difference of about 300 pounds per cubic yard of iron blast furnace slag from crushed stone, the former weighing 2300 pounds and the latter 2600 pounds (Rec., 840). We never figure much on the weight of sand; it weighs about 3000 pounds per cubic yard, but of course that depends a good deal on the moisture in it. Washed gravel weighs on an average 2900 pounds. We have used but very little Copperhill slag. Yes, the weight had something to do with it. I have got it here as something like 3000 pounds and Copperhill slag at 3300 pounds (Rec., 841).

By Commissioner Lewis:

Q. As you speak of clay gravel, does it mean gravel that carries a certain amount of silica and clay which serves as a natural binder, and which under the traffic of the road cements this material into a good surfaced material?

A. Yes, sir (Rec., 842).

There is a considerable variation in the different clay gravels respecting the percentage of rock; the rock is generally specified as a quarter inch and over and will run

from 25% to 60% in the various clay gravels we have in this state.

(Witness excused.)

[fol. 355] GEORGE B. GRAVES was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Price:

I reside and am engaged in the unwashed sand and clay gravel business at Warrenton, Ga., operating for 2 years and 8 months my plant at Norris, Ga., on the Georgia R. R., which has a normal capacity of 50 cars per day (Rec., 843).

Prior to April 1, 1925, I didn't have a general line of special rates on our materials out of Norris. Before I could bid on a contract I had to first secure from the railroads a rate. My competition came from South Carolina and a small pit at Wrens, Ga. My experience was that I was prohibited from reaching different points of consumption where roads were being constructed because South Carolina pits had a rate far below what I could procure. The Highway Department gave me business under pressure where they paid as high as 30¢ a ton above the rate out of Ellenton, S. C. In 1925, our conditions were relieved due to pressure and we were put on a mileage basis, which gave us an equal footing (Rec., 844).

I am an advocate of the mileage basis in intrastate movements because the railroads handling our commodity have a system of red tape to follow to get a rate; on the other hand, contractors are required to get the railroads to put in sidetracks at intermediate points because of long distances; by having a mileage scale I don't have to refer to the general freight office to learn what my rate is going to be; in many cases by long distance telegraph or telephone for a rate when the contractor is submitting his bid in a day or two; that applies to contractors as well as the State Highway Department and counties and small towns, and [fol. 356] we ship to the counties. South Carolina enjoys a better freight rate to the gateway of the coastal highway than I do by 3¢ a ton from Ellenton mines and about 13¢ from Steele's Creek (Rec., 845).

By the gateway to the coastal highway I mean Savannah. I load our materials by power machines which involves no shifting of cars; because my tracks are arranged on gravity; when cars come in they are put on loading tracks and do not involve switching; when the train gets in they end in and pull them out, and I can load 40 cars without switching. We are operating today a special train from my pit to Camak, the distribution point of the Georgia R. R., because the locals can't handle the traffic.

Cross-examination,

By Mr. Gwathmey:

The rate in 1925 met the relief but did not meet my approval, because it is entirely too high (Rec., 846).

I was quite willing to have the change made where I was discriminated against by 36¢ and the change enabled me to increase my tonnage substantially; in fact a trainload to one project a day. I ship throughout Georgia where I can get in on the freight rate but am barred in many cases because the rate is too high. At this time, generally speaking, I ship pretty generally throughout Georgia. I have attempted to bid on highway contracts in South Carolina and could not touch them because freight rates into South Carolina were too high (Rec., 847).

I am talking about interstate and not intrastate rates. When I said I was in favor of the mileage system intrastate and limited it to intrastate rates, I meant by that that I was eliminated in securing concessions to local points because we have so many flag stations, prepay stations. I would not care to go so far as to have it apply between states (Rec., 848).

[fol. 357] I might look with favor upon mileage scales interstate. I am loading sand and gravel unwashed at 20¢ a ton, clay gravel from 25¢ to 40¢, depending on specifications, based on the rock, and I have a fixed price on my bids, and it is practically the same the year round, although consumption has some bearing (Rec., 849).

Yes, I compete with other producers but I have a standing price all the way through and it is no different where the contract is for 100,000 or 50,000 tons or for 10,000.

(Witness excused.) (Rec., 849.)

G. E. HEYSER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I am traffic Manager for R. O. Campbell Coal Company of Atlanta, Ga., which produces sand, gravel, crushed stone and slag, and I have prepared a statement based on an investigation I made concerning prices of those materials during the past year to my company, which is as follows (Res., 850):

The Campbell Coal Company are building supply dealers, located in Atlanta, Fulton County Georgia, who buy and sell sand, gravel and other aggregates, which enter into building operations. They buy sand from the Atlanta Sand & Supply Company at prices ranging from 35 to 65 cents per ton f. o. b. shipping point. This applies to sand resold by the Campbell Coal Company in car lots.

The Campbell Coal Company takes its total supply of sand for its retail yards from the Atlanta Sand & Supply Company, the prices paid the Atlanta Sand & Supply Company being 60 cents per ton net f. o. b. shipping point, which [fol. 358] price has prevailed for sometime.

From my own knowledge I will state that the prices of Montgomery District sand in Atlanta are 10 and 15 cents per ton f. o. b. shipping point.

The Campbell Coal Company buys and sells gravel in car lots originating in the Montgomery District. The price charged by the Campbell Coal Company to customers has ranged from 30¢ per ton to 90¢ per ton f. o. b. shipping point. The price of 90¢ per ton f. o. b. Montgomery District being established very recently (Rec., 851).

(Witness excused.)

A. P. BURKE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I represent the Atlanta Sand & Supply Company whose plants are located at Rollo and Gaillard, Ga., 94 and 95

miles south of Atlanta, Ga., on the Southern Ry. The Allon Sand Company has a plant at Allon, Ga., whose shipments are also billed from Gaillard and my testimony in a general way will apply for that company.

The companies are engaged in the business of producing, selling and shipping sand only. The pit run material is pumped from the bank, washed and screened, and dewatered to remove the clay.

The average loading capacity of the two plants of the Atlanta Sand & Supply Company is twenty-five cars per day of 10 hours. That of the Allon Sand Company is about 10 cars a day.

About the only market we serve is Atlanta, Ga., which during the year 1925 took 81 percent of our total production. In previous years our tonnage to Atlanta has been [fol. 359] nearer to 90% of our production. Our average daily shipments for the year 1925 was about 19 cars per day from the 2 plants. (Rec., 852).

Practically all of our tonnage moves to Atlanta or to points beyond Atlanta and then chiefly to points within the State of Georgia. We have made shipments of sand to Chattanooga, Tenn., but this was a special grade of sand.

Our sand is either handled in a sand train as a general proposition and moves to Atlanta in train loads or is used to fill out the local trains. The tonnage of other freight on this division is very light and without this sand tonnage I do not believe the Southern Ry. could operate this division at a profit.

It has been our experience that sand for Atlanta proper is often unloaded within 24 hours and delivered on the job, whereas on cars of sand for beyond, generally are in the Atlanta terminals for three to ten days before moving out of Atlanta.

We have three sources of competition. With local sand produced in Atlanta, with sand from nearby pits moving by railroad to Atlanta, and with sand produced in the Montgomery District and at other points located on the Western Ry. of Alabama, east of Montgomery.

With regard to the local competition, this has always been a serious factor. Sand is produced from the creeks around Atlanta, and trucked to the jobs, displacing possible tonnage by railroad. The carriers in the past have

recognized this situation and in order to move our sand formerly had a 30¢ per ton rate in effect from Gaillard to Atlanta. This rate was in effect some twenty years prior to the increases under G. O. 28 of June 25, 1918 (Rec., 853).

After the increases of 1918 and 1920, and the 10% reduction of 1922, our rate was 57¢ per ton and remained on that basis until July 31, 1925.

[fol. 360] Effective August 1st, 1925, our rate from Rollo and Gaillard, Ga., to Atlanta, Ga., was increased from 57¢ per ton to 90¢ per ton. This was a further increase of 33¢ per ton or 57-9/10% at that time. Altogether as compared with the rate in effect prior to June 25, 1918, to the present time, our rate has been increased from 30¢ per ton to 90¢ per ton, or a total increase of 200%. The greatest portion of this increase took effect on August 1, 1925, when the Georgia scales went into effect.

In addition to the local competition which we are forced to meet at Atlanta, we are in competition with plants which are located within 15 and 20 miles of Atlanta. Take for example, Rex, Ga., and Helmer, Ga., both located on the Southern Railway. Rex, Ga., which is located on the Southern Ry., 15 miles from Atlanta, has a rate of 40¢ per ton under the Georgia Scale as compared with my rate of 90¢ per ton for 95 miles. The rate of 90¢ per ton from my plants to Atlanta, Ga., is 50¢ per ton higher than the Rex, Ga., rate for a difference of 80 miles greater in the haul (Rec., 854).

Contrasted with this, I call attention to the present rate of $1.20 per ton on sand from Montgomery, Ala., to Atlanta, Ga., which is only 30¢ per ton higher than our rate for a difference of 80 miles in the haul. The plant at Rex, Ga., is furnishing the Construction Department of the City of Atlanta concrete sand which is moving under this 40¢ rate.

The competition with Montgomery sand is of a more serious nature than the local competition and the sand from nearby plants in Georgia. We produce sand only and have to depend upon the sale of sand in order to stay in the business.

Under the reduction of 10% which became effective on July 1, 1922, the Montgomery rate on sand to Atlanta be-
[fol. 361] came 90¢ per ton. This rate was further reduced from 90¢ per ton to 77¢ per ton, that same month, making the rate 20¢ per ton higher than our rate of 57¢ per ton

for a haul from Montgomery of 80 miles greater than the mileage from our plants to Atlanta, Ga. The present adjustments from Montgomery, Ala., and from Rollo and Gaillard, Ga., to Atltanta, are on basis of the Georgia scale, 90¢ from Rollo and Gaillard and $1.20 per ton from Montgomery.

I have examined the proposed scale of the complainants in the Montgomery case and find that the rate from Rollo and Gaillard will be 85¢ per ton to Atlanta, whereas the Montgomery rate will be reduced 15¢ per ton to Atlanta (Rec., 855).

That makes the minimum rate $1.05 and ours 85¢. Our Rollo mileage is 94 and 95, two plants, and Montgomery is 175. It will make the difference in the rate if their scale is adopted 20¢ instead of 30¢ per ton which is in effect now. Montgomery sand is a by-product sand and is sold in Atlanta at by-product prices. A sand producer in Georgia cannot produce and sell his sand in competition with by-product sand and by-product prices unless the railroads maintain a rate relationship which will reflect proper differences in the rates for the distances transported, and while I know nothing of the system of rate making or the differences which should exist for the additional distances hauled, I do not think that 20¢ or even 30¢ per ton is a fair difference (Rec., 856).

The prices of sand produced at the points of my company vary from 25¢ per ton to 85¢ per ton. The average price would be in excess of 50¢ per ton. If Georgia deposits consisted of both sand and gravel, it would cost as much per ton to produce both of these materials as it does at the present time to produce sand only, and if we had gravel [fol. 362] we could then sell that material at prevailing gravel prices and take less for our sand if necessary going below the actual cost of producing the same, but in producing sand alone this cannot be done.

From my general knowledge of the situation, I will say that sand sells for about the same level of prices as the gravel, but this depends, as a rule, on the nature of the deposits. If the ratio of sand produced approximates or is greater than gravel produced, sand will usually sell for a lower price than gravel. But in localities where the ratio of production is chiefly gravel, sand in some cases will demand a higher price f. o. b. plants than gravel.

I do not think that a level of rates which is intended for uniform application should be prescribed upon a basis which does not reflect the general situation. Irrespective of the fact that I produce sand only, I do not feel that I can consistently ask this Commission to prescribe lower rates on sand than on the other roadmaking materials, but do ask that a basis be prescribed which will reflect a reasonable basis for the carriers, a reasonable basis for the shippers and a basis which will reflect proper differences for the various distances hauled (Rec., 857).

If this is done it will allow my Company to remain in business, as well as many other companies in a like situation to serve markets which are the natural outlets for their products. But if large corporations are permitted to place their materials 150, 200 and 250 miles from their plants at by-product prices, there is not one of us that can stay in business.

The complainants' proposal is $1.05 and 85¢ respectively and the railroads' proposal would make our rate $1.08 and [fol. 363] Montgomery $1.40. I started to gather information as to the falling off of traffic from certain points following the establishment of the Georgia scale but found it didn't mean anything because there was such a falling off in tonnage after August 1, 1925, the effective date of the rates, that it was obvious (Rec., 858) all users of these materials having known as early as February 25 when the order was issued to be effective April 1, began ordering large quantities of materials; some of our very small users placing orders for all we could ship. The rates were suspended until August 1.

That meant that they had several months in which to stock up, and a man who has a contract, if he has any room for storage whatever will naturally order materials. We had to prorate our shipments to our customers, in order to be fair to them, each one desiring to save the 30 cents a ton increase in the freight charges on the material which he knew he would have to bear after August 1st. One customer that I remember particularly, who uses about two cars a day, placed an order with the R. O. Campbell Coal Company, which we filed, for a large tonnage, and that tonnage was to be moved at the rate of 10 cars per day. So as I say, we had to divide up our shipments in order to take the best care we could of our customers. That situa-

tion was brought about by that order of the Georgia Commission (Rec., 859).

The order for that rate became effective April 1 to other points in Georgia than some competitive points; to Atlanta the rate was suspended. In April our shipment was 412 cars; May, 404 cars; June, 420 cars; July, 351 cars; August, 249 cars; September, 225 cars; October, 161 cars; November, 136 cars; December, 79 cars; and January, 1926, 109 cars (Rec., 860).

In my opinion the effect of a further increase in the present rate of 90¢ from Rollo and Gaillard to Atlanta would depend much on differentials maintained between our shipping points and other shipping points as to the rate level; naturally an increase would have some effect upon competition of local sand; it might result in building up that production to a certain extent as there are no large deposits but a good many small deposits. If the relationships were maintained it would make very little difference in its effect on our competitors with plants near Atlanta. We haven't sold a ton on a large contract. Sears, Roebuck offered us a contract for 30,000 tons at $1.30 f. o. b. Atlanta which we declined as they told us we would have to meet the competition of Montgomery at that price. The freight rate from Montgomery was $1.20 so the difference between that and the $1.30 delivered price was 10¢ per ton, and our price was 20¢ per ton (Rec., 861).

[fol. 364] The best information I can give is that that sand was all sold from the Alabama producing points. I do not recall when we have ever been without contracts in Atlanta at this season of the year, and we have been doing business 25 years. The present difference between our rate and the Montgomery rate to Atlanta is 30¢. And under the scale proposed by the Montgomery interests the differences would be 20¢. And under that proposed by the railroads it would be 32¢. We never load any sand as low as 20 tons to the car; we load to capacity or above (Rec., 862). I think the exhibits are in and will show the details on that. We usually get around 33 to 35 tons in a 30-ton car. For years our rate to Atlanta was as low as 30¢. I think the switching rate at Atlanta now is about $.25. My understanding from some older shippers is that they used to move sand to Atlanta for $4.00 a car with no demurrage (Rec., 863). When our rate was 30¢ a ton the switching in Atlanta was $2.00 a

car. We now load in box cars. No, the reason we could not take the Sears, Roebuck job was because the price was too low. Our average loading of sand is 19 cars per day. I do not have the average per car but Mr. Brooker will put that in the record for our company (Rec., 684). At this time we move everything in closed top equipment because the road prefers to furnish box cars at that point (Rec., 685).

(Witness excused.)

R. E. Suggs was thereupon called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I am sales manager for the Stone Mountain Granite Corporation, at Stone Mountain, Ga., and am authorized to [fol. 365] speak for the Stockbridge Stone Company, of Stockbridge, Ga.; the Morris Stone Company, at Holton, Ga.; the Kinney & Newmeyer Granite Company, the Wilson Chapman Cranite Company and the Johnson Granite Company, all of Lithonia, Ga. I have been connected with the stone industry in this territory for 14 years (Rec., 866).

I will read the statement I have prepared for this record:

The companies I represent have quarries located at Stone Mountain, Ga., 15 miles from Atlanta and at Lithonia, Ga., 24 miles from Atlanta on the Georgia R. R., The Stockbridge Stone Company has a quarry on the Southern Ry. at Stockbridge, Ga., 24 miles from Atlanta.

The Morris Stone Company has a quarry at Holten, Ga., on the Southern Ry., and the shipping point via Central of Georgia Ry. is known as Bolingbroke. The Morris Stone Company do not, according to my knowledge, make any shipments into the Atlanta market.

These companies produce crushed stone and rubble stone, and the Atlanta market consumes about 90% of the production of the Lithonia and Stone Mountain quarries. Crushed stone competes with gravel, slag and clay gravel. Our chief competition is with the Montgomery District and Chattanooga gravel and with slag produced in the Birmingham District.

The present rate from Stone Mountain, Ga., to Atlanta is 50¢ per ton for 15 miles. From Lithonia and Stockbridge, Ga., to Atlanta the rate is 60¢ per ton for a dis-ance of 24 miles. The rate from Montgomery District on gravel is $1.30 per ton for 175 miles, as compared with a rate of 60¢ per ton from Lithonia to Atlanta for 24 miles. The corresponding rate from Chattanooga is $1.20 per ton for about 137 miles. Birmingham has a rate of $1.30 per ton on slag for 167 miles (Rec., 867).

Our rate from Lithonia and Stockbridge, Ga., is 70¢ per [fol. 366] ton lower than the gravel rate from Montgomery and on slag the rate from Birmingham is 60¢ per ton lower than the gravel rate from Chattanooga. The Stone Mountain rate is 50¢ per ton for 15 miles and is 80¢ per ton lower than Montgomery and Birmingham and 70¢ per ton lower than from Chattanooga to Atlanta.

Irrespective of these differences in rate in our favor, we are not able to sell any considerable portion of crushed stone in competition with Montgomery gravel and Birmingham slag in Atlanta, or at any point in Georgia, because of the fact that crushed stone cannot be produced and sold for anywhere near the figures for which gravel and slag are sold in the Atlanta market.

Our prices in the past year have ranged from $1.05 to $1.50 per ton, depending upon the size. As compared with 1914 and 1915 these prices are about 10¢ per ton higher.

We are now and have been confined to the production and sale of crushed stone for road building purposes only for the reason that we are unable to compete with other concrete aggregates such as gravel and slag in small sizes in other building work.

On account of the gravel and slag competition in the past, we have found that it would not be profitable to equip our plants to produce this character of material for other classes of building work and when no road building orders are available we close down our plants (Rec., 868).

In view of this situation Montgomery, Birmingham and Chattanooga have an open market in Atlanta for all classes of building work other than road building and have no competition with nearby quarries in this territory for this class of building work.

On road building work we do compete, and as an illustra- [fol. 367] tion I call attention to the road built from Scott-

dale to Stone Mountain, Ga., covering a stretch of 6 miles which was built with Birmingham District slag. This is a part of the road over which you pass in going from Atlanta to Stone Mountain. This work was located only eight miles from Lithonia and was built almost paralleling the tracks of the Georgia R. R. At the present time we are not shipping on any work in Atlanta except on one job which is being supplied by Stockbridge.

The Stone Mountain Granite Corporation formerly had three crushed stone operations at Stone Mountain, Ga., but these have all been closed down and discontinued for the reason that we could not profitably operate the same in view of our inability to meet slag and gravel competition from Montgomery and Birmingham (Rec., 869).

Now, in regard to clay gravel, this commodity does compete with crushed stone, slag and gravel, and in this county alone there have been trainloads of clay gravel used in the construction of roads. Our important interests are centered in the Atlanta market, and I do not think that the present adjustment of rates based on the Georgia scale should be disturbed from either our quarries or from Montgomery, Birmingham and Chattanooga, unless it would be for the purpose of increasing the present differences which now exist in the rates.

Cross-examination.

By Mr. Gwathmey:

All we want is an equal spread based upon the difference in distance. Our crushed stone competes with clay gravel in road construction, depending on the type of road; if it were not for clay gravel, crushed stone, slag or gravel would be used (Rec., 870).

[fol. 368] Clay gravel can be and is used as a base for an asphalt road in the same manner as you would put down a concrete base and a working surface of asphalt (Rec. 871).

The weight of slag has had something to do with the proposition as compared with our materials.

(Witness excused.)

R. W. UNDERWOOD was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I am secretary and treasurer of the Pine Mountain Granite Company, whose plant is located at Lithonia, Ga., 24 miles by rail and 19 by the highway from Atlanta. We were incorporated in 1907. I heard Mr. Suggs' testimony and regard it as correct (Rec., 872).

I should attribute the lesser amount of shipments to Atlanta from Montgomery in the latter part of 1925 to the diminution of road work in Atlanta and a marked reduction in street work in Atlanta in 1925 compared with 1924. It is common for a good deal of work to be carried over from one year into the spring of the following year, and I should say there was a lessening of business in Atlanta in the last half of 1925. We make what is called granite sand, being the screenings of the production of crushed stone (Rec., 873). It is used for the same purposes as sand generally and some engineers permit it to be used in concrete and wherever used is used in the place of ordinary concrete sand. We endeavor to get 50¢ a ton but it has sold for 25¢. But in 1911 we sold the Industrial Engineering Company crushed stone for $1.10 at the quarry. I agree with Mr. Suggs as to the present values. The present value runs from $1.00 to $1.50 a ton with an average of [fol. 369] about $1.25. It seems to me if the Lithonia interests were deprived of the Atlanta market they would have to shut down their crushed stone business. We can't go east to Augusta, Ga., because of South Carolina competition, and we can't go south to Macon because there is a quarry near there, and there is no business of any consequence north of Atlanta, so that it is essential that the Lithonia output go to the Atlanta market (Rec., 874).

The Georgia R. R. hauls a good deal of clay east and those cars come west empty, so that the practice of the agent at Lithonia is to take out of those trains the cars that he needs and we load and send them to Atlanta.

Cross-examination.

By Mr. Gwathmey:

Our plant is on the Georgia R. R. between Atlanta and Augusta and our present rate to Atlanta is 60¢, and I should say our strongest competition in the Atlanta market is Montgomery, Birmingham and Chattanooga, with slag and gravel shipped from those points (Rec. 875).

The present difference Lithonia against Montgomery in shipping to Atlanta, I am told is 70¢. Not now is our crushed stone a by-product of our cut stone business, today we actually quarry stone for our crusher and it is no longer considered a by-product. I don't think the quarries could exist without the crushed stone business.

(Witness excused.)

C. D. Bailey was thereupon recalled as a witness and, having been previously sworn, testified as follows:

I was sworn yesterday, at which time I promised the Examiner that I would file with the Commission an exhibit showing a list of the so-called short and weak lines which I represented, and who desire special treatment in this case, and I now file here my Exhibit No. 226.

[fol. 370] (The statement was thereupon received in evidence, marked "Defendant's Exhibit No. 226, Witness Bailey.")

(Witness excused) (Rec., 876).

Edwin Brooker was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Burchmore:

I reside at Washington, D. C., and it is on the record who I appear for. My railroad traffic experience covers a period of 24 years, 15 of that in clerical and executive capacities with the railroads, and the remainder with com-

mercial interests. Formerly I was traffic manager for the Pennsylvania Sand & Gravel Producers, and in that capacity had intimate daily contact with the sand and gravel traffic of Western Pennsylvania, Ohio, Western New York and West Virginia (Rec., 877).

Besides that I made special studies and investigations in traffic and transportation conditions in that section of the country respecting cases before the I. C. C. and the State Commission of Pennsylvania. I have had special intimate contact with traffic and transportation conditions on sand and gravel in Indiana and Illinois and in recent months made special studies and general investigations as to the conditions in the Western Territory, and testified and offered voluminous exhibits based on my investigation in the Western Rate Case recently before Commissioner Aitchison. I spent about 2 years as traffic manager of the National Sand & Gravel Association, who have members all over the United States (Rec., 878), and gathered from [fol. 371] day to day in the regular course of my duties statistics and information from those producers, and the exhibits I have prepared deal with conditions in various territories. I will present my exhibits and make a brief statement as to the contents of each.

Page 1 I think is self-explanatory, it is information taken from reports on file with the Interstate Commerce Commission. The lower section is the report issued by the Bureau of Statistics of the Interstate Commerce Commission, and there is just one item to which I wish to call attention in connection with that table, and that is for the Southern region, with an average mileage operated of 38,176 miles, the revenue tons carried one mile, expressed in thousands, is 52,720,468, and the freight revenue $581,500,000.00. I wish to compare that with the Southwestern district of 32,529 miles, and only 30,948,297 revenue tons carried one mile, with a revenue of $400,178,692.00. I wish to call attention to the average mileage for the two regions, which are approximately the same, but in the Southwestern District the average revenue per ton per road is $2.53, as compared with $2.18 for the Southern District.

Page 2 is figures taken from the reports of the United States Geological Survey covering the production of sand and gravel in the Southern states, and also of crushed stone in the Southern states for the years 1916 to 1923 inclusive.

I wish to call attention to the increase in the production in the state of Alabama, particularly between the years 1922 and 1923; the 1924 production of sand in the State of Alabama was 2,443,753 tons. Now, you will note in that table that there are five states producing more tons of sand and gravel than Alabama, and only three states, Florida, Georgia and South Carolina, that did not produce as much [fol. 372] sand and gravel as Alabama. In Georgia the entire production of sand and gravel, and that is chiefly sand I may state, is only 595,117 tons, which added to the crushed stone production in Georgia of 239,030 tons, would give the combined production of those materials in the state of Georgia. I want to state that those figures do not include the production of slag in Alabama.

Page 3 of my Exhibit are taken from the reports on file with the Interstate Commerce Commission, and cover various lines in Southern Territory. I call attention to the note at the bottom of the page which gives a list of articles included under the description of clay gravel, sand and stone, and it will be noticed that it covers all kinds of stone, all kinds of clays, fuller's earth, and various other articles, so that an average loading taken from the Commission's report as to those commodities would not really express the average loading of sand, gravel and crushed stone alone in Southern Territory (Rec., 880).

In connection with Pages 4, 5, 6 and 7 of my exhibit, I want to correct the dates shown on there as to the effective date upon which the Georgia scale took effect, I show it as of July 31, 1925, whereas that should read March 31, 1925, in all instances, it first appears in Column 6-A, Column 7 and Columns 8 and 8-A should read April 1 instead of August 1. The same changes are made on the other pages wherever it appears.

This shows the rates in effect between points in Georgia, which were merely maximum rates and in effect prior to General Order No. 28, it shows the subsequent increases and reductions and in Columns 6-A and 6-B, the actual amount of increases from 4-24-18 to the present time, or to March 31, 1925. Contrasted with that I show the present [fol. 373] Georgia scale, and the change effective April 1, 1925, on Page 4, with the amount of actual increases from 6-24-18 to date. Page 6 of my Exhibit is merely a comparison of the old Georgia maximum scale and the present

Georgia scales, and I might state that those are minimum scales, and the carriers' proposed scale, which I have termed the interstate maximum scale (Rec., 881). Yes, the same as the carriers propose in this case, Column 4.

In Columns 1-A to 4-A inclusive are shown the earnings per car based on a 50 ton loading for sand and gravel. I use earnings in the sense of revenues, and in Columns 1-B to 4-B inclusive, I show the revenues per car mile. On just a very few exhibits as they have gone in have I seen car mile revenues.

On Page 8 I show the history of the rates from Montgomery, Ala., versus Georgia points to Atlanta, Ga., commencing with June 24, 1918, to the present time. You will note that prior to General Order No. 28, the rate from Montgomery to Atlanta was $1.20 a ton, and contrasted with the rate of 30¢ from Rollo and Gaillard, Ga., to Atlanta of 30¢ per ton at that time, there was a difference of 90¢ per ton. General Order No. 28 was issued increasing those rates 20¢ per ton, which still maintained the difference. Under Ex Parte 74, when the rates were increased 25%, the differential of course was increased to $1.12 (Rec., 882), because that was the percentage increase, but on 4-21-21, Montgomery was given a 50¢ reduction in rate, reducing the differential to 62¢ per ton. On September 8th of the same year, they were given a further reduction of 25¢ per ton, with no change from Rollo and Gaillard, reducing the differential to 37¢ per ton. The 10% reduction of July 1, 1922, followed, reducing the differential to 33¢, and the Western Railway of Alabama in the same month [fol. 374] of that year then established a rate of 77¢ per ton, as compared with 57¢ from Rollo and Gaillard making the differential 20¢ per ton. That adjustment stayed in effect until the Georgia rates became effective August 1, 1925.

I want to contrast the change made in this rate on July 18, 1922, with the increased movement from Alabama points, which is shown on Page 2 of my Exhibit, immediately following that change. That will also refer to the decrease which I gave for the Alabama production for the year 1924.

Now, under the Georgia scale effective August 1, 1925, the Gaillard rate was increased from 57 to 90 cents per ton, and the Montgomery rate was put back on a $1.20

basis, in lieu of 77¢ per ton, making the present differential which is now in effect of 30¢ per ton. In other words, Montgomery has received no increase at all in their former rate of $1.20 per ton in effect on June 24, 1918, but has exactly the same rate as they had at that time, whereas the Rollo and Gaillard rate has increased 200% (Rec., 883).

Under the carriers' proposed scale, I have shown the relative rates as $1.40 from Montgomery and $1.08 from Rollo and Gaillard, making a 32¢ differential. Under the Complainants' proposed scale, the rate from Montgomery will be $1.05, and from Rollo and Gaillard, Ga., to Atlanta 85¢, making the differential 20¢ per ton. On the right hand side, I have shown a similar comparison with Chehaw, Ala., for the same period. Prior to August 1, the plant at Chehaw was shut down, and practically went out of business, but I understand that a new plant has been established at that point, so that the Chehaw competition is something which will have to be reckoned with in the future [fol. 375] in regard to the Atlanta market. The distance from Chehaw is 136 miles, and I understand the Complainants' scale will make a rate of 95¢ per ton to Atlanta from that point. The present rate is $1.10.

Now, Page 9 shows the various rates from Georgia points, as well as from Alabama and Tennessee points to Atlanta, Ga. I have shown the rates in effect prior to August 1, 1925, and the amount of increases which took effect on August 1, 1925, under the application of the Georgia scale. The actual increase, for example, from Rollo and Gaillard to Atlanta on August 1, 1925, was 57.9%, and from Montgomery on sand 55.8% (Rec., 884).

I understand testimony was put into the record in regard to the falling off of the shipments to Atlanta from interstate destinations since the establishment of the Georgia scale. Page 10 of my Exhibit shows the shipments of sand of the Atlanta Sand & Supply Company from Rollo and Gaillard for the entire year 1925, divided as to the shipments to Atlanta and shipments to points other than Atlanta. You will note that August 1, 1925, and subsequent thereto, there was also a marked decline in the movement of sand from Rollo and Gaillard to Atlanta.

Now, this shows the total tonnage shipped to Atlanta and to other points, and shows that the Atlanta shipments consisted of 80.9% of the total movement from the plants

of the Atlanta Sand & Supply Company at Rollo and Gaillard. I also show that the majority of the cars furnished to the Atlanta Sand & Supply Company are 60,000 pounds capacity cars, they comprised 71.9% of the total cars furnished, and the average loading on all cars furnished was [fol. 376] 34.2 tons per car. At the bottom of the page I show the total increase in revenue to the Southern Railway based on the increases made in the rates on August 1, 1925, and showing shipments which moved (Rec., 885) after that date, the total increase was $10,117.47, and if the same ratio of increase was applied to the entire 1925 tonnage, the total increase would have been for the year $36,068.01 on shipments from the plants of the Atlanta Sand & Supply Company.

Page 11 of my exhibit shows shipments of clay gravel, sand and stone via the Western Railway of Alabama and Atlanta & West Point Railroad for the years 1917 to 1924 inclusive. The revenue freight originating expresses to a very great extent the movement or the number of carloads of sand and gravel originating on the Western Railway of Alabama. You will note that beginning with 1922, the tonnage has increased from 4,506 cars to 10,503 cars, and in 1924 to 15,218 cars. I want to compare that with the revenue freight which the Atlanta & West Point Railroad received from connecting carriers. The Atlanta & West Point R. R. connecting with the Western Ry. of Alabama, constitutes the route from Montgomery to Atlanta. Their shipments received from connecting carriers increased from 3,977 cars to 8,306 cars between the years 1922 and 1923.

Page 12 is merely a comparison of various intrastate scales in various southern states with the present Georgia scales and the carriers' proposed scale which is shown under Column No. 3. No explanation is needed, because I understand these scales have been put into the record (Rec., 886).

On page 14 I show the rates from Montgomery to the Birmingham District via routes other than the direct line, and the rates applicable over such routes for different dis- [fol. 377] tances, and a comparison with the Georgia scale rates, and the carriers' maximum scale rates for those distances. On the right hand side of this page I show the corresponding rates from Georgia points to the Birmingham district. Take, for example, from Montgomery to Bir-

mingham via the Central of Georgia Ry., the Montgomery shippers have the use of that rate via the Central of Georgia Ry. today for a distance of 252 miles, which is considerably greater than any of the distances from Central of Georgia shipping points to Birmingham via their line.

On Page 15, I show the rates over the direct lines from Montgomery, Jackson's Lake and Prattville Junction to the Birmingham District, and a comparison with the Georgia scales and the maximum interstate scale rates. I want it understood that when I talk about the maximum interstate scale rates, that is the scale that is proposed by the carriers in this proceeding (Rec., 887).

Well, on page 14 the routes are shown there from Montgomery to Birmingham via Maplesville and the Mobile & Ohio, Montgomery to Birmingham via the M. & O., Alabama Great Southern via Tuscaloosa; I don't show the routes in all cases, no, sir.

By Mr. Gwathmey:

Q. The rules of the Commission require as I recall it, that where distances are shown in the exhibits, the exhibits themselves should show how those distances have been figured.

A. I recall several exhibits you put in yesterday in regard to rates between Central Freight Association points that did not show that information.

Mr. Gwathmey: Two wrongs don't make a right.

Mr. Mohr: Those exhibits had the routes shown on them.

Mr. Gwathmey: For instance, as showing the importance of what I have in mind, I don't know but what on a great [fol. 378] deal of these exhibits the distances are figured via some such unheard of and unusual route as the route from Montgomery to Birmingham in connection with the Central of Georgia Ry. that we were talking about a minute ago (Rec., 888).

Mr. Brooker: That is the direct route of the Central of Georgia, and the only way they can handle it.

By Mr. Gwathmey:

Q. You don't mean that they have a direct line from Montgomery to Birmingham?

A. It is the direct route of the Central of Georgia, and the only way they can go.

Mr. Gwathmey: It goes all over the country, entirely out of line.

Mr. Brooker: What routes do you want? I will endeavor to give them to you.

Mr. Burchmore: There has been no effort on the part of the complainants or the carriers to give you the benefit of any facts that would allow you to establish a rule or that would assist you in establishing a rule as to what degree of circuity shall be permitted and what degree shall be prohibited, in the application of these scales, which they say shall be maximum, the long lines that meet the short line, I have been waiting for facts in that connection, so that Mr. Gwathmey is purely argumentative when he says that that is unduly circuitous, that route, he has given no facts that would so designate it.

Mr. Gwathmey: I don't understand that we are trying Fourth Section questions here. I merely wanted to show that according to every consideration the Commission has [fol. 379] ever given to these questions, to figure a route or your distance rather between two points, say Montgomery and Birmingham, in connection with the application of rates, and then use the route of the Central of Georgia Ry. via Columbus, Ga., is just beyond all question (Rec., 889).

Mr. Burchmore: How long must a route be before you won't let this maximum scale apply over it?

Mr. Gwathmey: I am not going to argue that question with you.

Commissioner Lewis: It would have been very nice to have had those routes, I wish he could furnish that.

Mr. Brooker: The routes are all stated in connection with those rates I have shown from Montgomery to Birmingham; I have been absolutely fair; for instance, on Page 14, I gave the short haul routes from Montgomery to those points.

By Commissioner Lewis:

Q. You always give the short haul direct routes?

A. Yes, sir, on Page 14 via the Louisville & Nashville R. R. direct.

By Mr. Burchmore:

Q. Those are the shortest routes you can find?

A. Yes, sir, those are the short line routes from Montgomery, Prattville Junction and Jackson's Lake to Birmingham, I have not tried to cover anything up, I am trying to show the exact situation as it exists.

Commissioner Lewis: Mr. Gwathmey, has your objection been met? It seems to me he has got there on that marginal column to the left the route indicated, and also the citation of the tariff on Page 14 under the head of commodity origin points (Rec., 890).

[fol. 380] Mr. Gwathmey: I did not expect to ask the Commission to exclude these exhibits, I want the objection made, and I want the exhibits received subject to that objection, it is really in the nature of a comment on the exhibit, but I think it proper to note the objection.

Commissioner Lewis: My point is, it seems to me he has given here the information you want, and I wondered if you had noticed it, he has given the routes and the tariff authorities.

Mr. Gwathmey: I don't think that is done throughout.

Wherever I have dealt with single line rates, I have shown in every case the single line rates of that railroad and if I showed the rate on here it would simply be showing the name of that road as the route.

On Page 16, I show rates from Montgomery, Ala., on both sand and washed gravel to Atlanta & West Point Railroad stations effective prior to August 1, 1925, and the present rates, which really are in most instances these rates on the basis of the present Georgia scales. I show both single line and joint line haul rates in connection with this comparison, but I understand that these lines were considered as one line for rate making purposes, I don't know whether that is correct or not. I also show comparison with the carriers' proposed maximum interstate scale (Rec., 891).

On Page 17, I show a comparison of rates from Nashville, Tenn., and Camden, Tenn., to various points on the N. C. & St. L. Ry., and a comparison of such rates with the Georgia scales and the carriers' proposed scale. You will note that, particularly on gravel, the Georgia scale if applied between

these points in Tennessee would mean material increases in a good many of the rates.

[fol. 381] Page 18 are the present rates of the Southern Ry. from LaGrange, Tenn., and Gravel Siding, Miss., and a similar comparison. The present Georgia Scale and also the carriers' proposed scale would materially increase these rates, if placed into effect.

On Pages 19 and 20, I dealt with the situation in regard to the rates from C. & W. C. pits to Georgia and Florida points. From the C. & W. C. points, in I. & S. Docket 1854, 83 I. C. C., 432, the Commission approved for application from C. & W. C. stations to Georgia and Florida points a certain basis of rates which to Atlantic Coast Line R. R. stations are predicated upon using the single line scale basis (Rec., 892).

By Commissioner Lewis:

Q. Did you give your citation right on there?

A. I have it here, 83 I. C. C., 432, Docket 1848. Now, it is my understanding, and I hav- checked into the situation pretty thoroughly, I understand that these commodities are the only commodities moving from C. & W. C. points upon which the carriers attempt to apply the single line basis; in other words, on all other traffic the rates are high for two line hauls, I wouldn't say all other traffic, but the majority of the traffic, the rates are higher for hauls over the C. & W. C. and the Atlantic Coast Line than the single line rates, and if the Carriers' proposed scale for joint line hauls were established from the C. & W. C. points to Georgia points, which is the basis that the carriers followed out for two line hauls between points in Georgia, that all of the rates from C. & W. C. points to Georgia points would be materially higher than they are today.

By Commissioner Lewis:

Q. Under the decision?

A. Not under the decision, because the Commission es- [fol. 382] tablished the single line basis in that case from the C. & W. C. points to Atlantic Coast Line stations, and I have shown contrasted with that the present Georgia scale for the same distances. In other words, I feel that

the proper basis from C. & W. C. points to Georgia points would be the Carriers' maximum scale rates for joint line hauls, and by making the comparison then with the present Georgia scale for equal distances, you can see the relationship in the existing rates (Rec., 893).

By Mr. Price:

Q. The Georgia Commission prescribed rates for Class A lines, which is the Trunk Line rates, and rates for the Class B lines, which is the short lines, and then a third scale to apply jointly between Class A and Class B lines, and I have just been wondering which one of those scales is represented here on your exhibit?

A. If I had my brief case I could tell you just what scale it was, but I don't recall (Rec., 894).

Commissioner Lewis: I am now proposing in no spirit of arbitrary action, to dispense with the filing of briefs in this case, and to substitute therefor the argument of this case in Washington on March 12. I will say there will be a tentative report, and that the tentative report of course will be subject to the usual procedure, and in that way protect, it seems to me, the interests you gentlemen may have in behalf of your clients (Rec., 895).

Mr. Mohr: May I state that, in accordance with the understanding reached yesterday, I have had prepared as Exhibit No. 217 the testimony of the Witness Bayless, referred to at that time, and also the blueprints accompanying the same, and they have been distributed (Rec., 896).

[fol. 383] Edwin Brooker was thereupon recalled as a witness and having been previously sworn, testified as follows:

Direct examination (continued):

Page 20 of my Exhibit also deals with the question of rates on clay gravel from Charleston & Western Carolina Railway stations to points in Georgia and Florida, and reflects the old rates as well as the rates the Commission approved in that decision, and the earnings per ton mile

under both of those rates, and the revenues per car and per car mile. The Commission in fixing the level of rates in that case only considered the revenues based on a 66,000 pounds average loading of this material, and at this point I wish to call attention to Page 437 of I. C. C. Report No. 83, that is, I. & S. Docket 1848. In comparison with this, as long as we are considering rates, uniform rates for the territory, and on commodities which load in excess of 33 tons loading, I have shown the earnings per car and per car mile on the average loading which has also been used throughout this exhibit on these commodities. There is a correction necessary on that exhibit as to the I. & S. Number, it should be 1848 instead of 1854 (Rec., 897).

Page 21 compares the Georgia and the carriers' proposed scales with various rates and earnings per ton mile on other commodities between points in the State of Georgia. This exhibit shows that the rates on these other materials are considerably higher than the rates on the sand, gravel and crushed stone, and the same difference in the rates is reflected in the revenues per ton mile. But if you refer to Page 22, it shows the revenues per car and per car mile due to the difference in loading with the average earnings per car mile of this material under very much lower rates [fol. 384] compares very favorably with the earnings per car mile of the other commodities; and it is my contention that the per car mile earnings are a proper basis of comparison in preference to the per ton mile earnings because the per car or the car is the unit of transportation, and not the tons.

On Page 26, the first three columns compare the general scales and the brick scales in the Memphis-Southwestern Territory, the Central States Territory and the Southern District, as fixed by the Commission, with corresponding rates on common brick. You will note the Southern District scale is lower in a great many instances than either the rates in the Central States Territory or the Memphis Southwestern Territory on brick; but when it comes to sand and gravel and crushed stone, the Southern District scale rates as proposed by the carriers in a great many cases are higher than the Central States scale, and more nearly approximate the Memphis-Southwestern scale than do the brick scales (Rec., 898).

On Page 24, the first four columns show the so-called Texas-Shreveport Scale in effect prior to General Order No. 28, as increased and reduced under the general increases and reductions. Under Ex Parte 74, the rates were increased 35%. The present scale is shown in Column 5, and the present Memphis-Southwestern scale is shown in Column 6. This is the same as the Texas-Shreveport scale except for distances beyond 175 miles.

In Column 7 I have shown what the rates would be if the original Texas-Shreveport Scale in effect prior to General Order No. 28 had been increased 20¢ per ton, and then further increased 25%, which was the increase allowed in Southern Territory, instead of the 35%, which was the increase allowed in Western Territory, and the resulting [fol. 385] rates are shown in that column. At 100 miles, for example, we would have a rate of $1.02 per ton, instead of one dollar per ton on gravel and crushed stone under the Georgia scale, and $1.08 under the maximum interstate scale proposed by the carriers.

Page 23 needs no explanation; it is a comparison with various other scales in Western Territory (Rec., 899). Most of them are State Commission scales; if you will look back on Page 33, you will see the authorities for a great many of those.

Now, Witness Doss, in his Exhibit No. 77 showed various rates on sand between points in Central Freight Association Territory, and I merely wish to insert into the record at this time that that statement does not show the movements of sand from the large producing points of common or building sand in Central States Territory, and as illustrations, I wish to put a few producing points in the record.

I could add to this list at least a hundred points, points or origin producing the character of sand which is covered by this proceeding, which are not included in that statement, and I have only found one or two or three origin points in that statement from which points I know that building sand and gravel is shipped (Rec., 900): Akron, O.; Massillon, O.; East Liverpool, O.; Fort Jefferson, O.; Mechanicsburg, O.; Steubenville, O.; Attica, Ind.; LaFayette, Ind.; Terre Haute, Ind.; Curran, Ind.; Lincoln, Ill.; Pekin, Ill.; East St. Louis, Ill.; and Alton, Ill.

Witness Doss in Exhibit No. 79 showed various mileage scales in Central Freight Association Territory. It is the

common practice and also the universal practice in the Central States Territoy to publish specific commodity rates from all producing points to practically all destinations to which any of these plants wish to ship, and these are named as specific commodity rates, and the mileage scale rates do [fol. 386] not apply except in case of a movement for which no specific mileage rate has been established.

Exhibits 90 to 122 contain various rates prescribed by the Commission reflecting the 40% increase and reduced 10%; these are not the present rates. In this connection, I wish to call attention to Docket No. 13231, 74 I. C. C., 616, and wish to read into the record the follows: "Numerous reductions in the rates on sand and gravel in Central Territory were made in 1921. A scale prescribed by the Public Utilities Commission of Michigan reduced rates on those materials in that state approximately 13%; and intrastate rates in Ohio were lowered 28.6% by order of the Public Utilities Commission (Rec., 901), the effect of which was to remove the increase of 40% granted in 1920. On October 21, 1921, we authorized the carriers in Central Territory to file tariffs on five days notice reducing their interstate rates on sand and gravel to amounts equivalent to 115% of the rates in effect prior to August 26, 1920, subject to the Michigan distance rates as minima; that reduction appears to have been quite generally made, but complainants insist that it was wholly inadequate."

I also want to state that that reduction was also made in the rates between points in Trunk Line Territory. Now, the Ohio intrastate rates referred to in that decision were before the Commission in—I don't know the docket number, but the citation is 85 I. C. C., 66.

As to the uniform mileage scale of class rates effective throughout C. F. A. Territory, it is split up into zones, Zone A and Zone B scales, and then a still lower basis between points in Illinois. There is a general basis of class rates through the territory except the Northern part of Michigan, and your Zone B scale applies, which is a percentage higher that Scale A (Rec., 902).

[fol. 387] I would say there are varying levels of sand and gravel weights in various sections of the Official Classification Territory; lower rates in Michigan and Western Indiana and Illinois than in the eastern portion of the Cen-

tral States; in the Trunk Line Territory, in the territory west of the Susquehanna River running through Pennsylvania, you have a still lower basis than in the territory east of the Susquehanna, and as a designated point there I might mention Harrisburg. That general statement is based on my knowledge derived from a study of various tariffs that let me to prepare numerous rate exhibits. It is also true in Western Classification Territory, rates in Wisconsin would be lower than in Minnesota; there are varying rates in different points.

By Commissioner Lewis:

Q. Before you proceed, take for example Column No. 5, Sheet No. 5 of your Exhibit No. 225, this is typical in Wisconsin we will say, do they have separate scales for sand and separate scales for gravel and crushed stone? (Rec., 903.)

A. They do not, they are all on the same basis.

Q. Does that apply to all those other states?

A. Yes, sir, all the western states and states shown on Page 25. Outside of the Southern Territory, the only place where important distinctions are made as between sand and gravel is in the New England states, where the Boston & Maine R. R. publishes different rates on sand than on gravel. I think they are all on my exhibit on Page 26. It applies on all these commodities. There are numerous exceptions to the scale which apply to points like Milwaukee, from Zanesville to Milwaukee, and other producing points.

By Commissioner Lewis:

Q. I just happened to notice on Column No. 5, without looking at the state it indicated, but speaking generally, [fol. 388] well, you have covered it in all the other territories except the South, here there is just one scale to cover all these commodities that are here under review? (Rec., 904.)

A. That is the general practice, yes, sir. There is a peculiar situation in Illinois, because from important quarries, such as Thornton, Ill., and Kankakee, Ill., they extend the entire length of the state, distances of 250 miles or more, at a rate of one dollar a ton, and load this material on empty

coal cars going into that territory, but outside of that particular movement, while the rates, there is no uniformity as to the rates, I would say that the rates generally are on about the same level as crushed stone. A just recent case in which I participated was I. & S. 2306, in which rates from Indiana and between Illinois points were checked out in that proceeding by consent of all parties between numerous points in that territory, and crushed stone rates were put on a parity with the sand and gravel rates at that time insofar as we were able to do so (Rec., 905).

On Page 26, I compare the Georgia scales or the maximum interstate scale with some of the scales in the Central States Territory which have been prescribed in various decisions. I would not say that the Ohio Scale was exactly prescribed, because that is an average weighted scale which was just merely referred to in that decision, but the Michigan intrastate scale is a prescribed scale, and the Indiana intrastate scale is also a prescribed scale by the Indiana Commission. In the New England States, those are voluntary rates maintained by those various carriers shown for both state and interstate application.

That leads me to Pages 27, 28, 29, 30 and 31, which are merely comparisons of the Georgia scales and the carriers' proposed scales, with the rates between Central States [fol. 389] Territory, and in my opinion more nearly reflect the proper level of rates on those materials in that territory than some of the exhibits which were put in by the carriers yesterday.

Page 32 deals with the question of joint line differentials. I have shown the carriers' proposed scale, and the basis they proposed in this proceeding, and have shown the additional revenue per car which is to be added to the single line revenue provided their basis is adopted. I have also shown similar information under the Georgia mileage scale, and have shown the basis under the Southern district mileage scale on brick. You will note under 20¢ per ton arbitrary (Rec., 906) for joint line hauls on brick, the carriers' additional revenue for interchanging this traffic is $6.40 per car. In regard to the two line differentials in Central States Territory, as a general proposition, unless the rates are too low, there is no distinction made as to single and joint lines. It depends to a large extent on the attitude of

the carriers in being willing to allow producers on another line to come into their own territory. In the Pennsylvania Case, while no issue was made as to the two line rates, the Commission did adopt a 20¢ per ton differential for joint line hauls. In the Western states, it is the usual practice not to add a differential for two line hauls, but to take a certain percentage of the single line rate, and add them together to arrive at the basis of joint hauls. There have been various decisions of the Commission in the Western Territory fixing a differential of 20¢ per ton, and it is my opinion on the joint line haul rates, that there should be some arbitrary added to the single line rate for all distances in order to cover the cost of interchange between the two lines. That would apply whether it was 20 miles or whether it was 200 or 1,000 (Rec., 907).

[fol. 390] It is just as much a fixed charge as the terminal charge at the origin points and at the destination.

On page 33, I have given a list of various proceedings, with mileage scales which exist in various states, as well as the tariff authorities for the most of them, showing that the application of the rates prescribed applied on the commodities enumerated; I did not include all the commodities, but where they specified the three main commodities here under consideration, such as sand, gravel and crushed stone, I stopped my description with that.

Mr. Burchmore: On Mr. Brooker's behalf, Exhibit No. 225 is offered.

(The statement was thereupon received in evidence, marked "Defendants' Exhibit No. 225, Witness Brooker") (Rec., 908).

I have a proposed scale to offer, but before I start talking about the mileage scale, I want to call the attention of the Commissioner to the fact that under General Order No. 28 the sand and gravel rates were increased 20¢ per ton instead of 25%. This had the effect of greatly increasing the short haul rates on sand and gravel to a greater percentage than the longer haul rates, and the carriers today in considering mileage scales on these commodities for the longer hauls in my opinion do not take into consideration the fact that the long haul rates did not receive their proper proportion of increase as compared with the short haul rates under that particular order.

Now, in the second place, a mileage scale as a general proposition can be suggested which will reflect almost any situation, if you deviate from some established basis of [fol. 391] progression and grouping. I can draw up a mileage scale which will fit the exact situation to meet the needs of any plant who wants to employ me to do so. There are two factors in regard to the establishment of a mileage scale, and that is the terminal charge and the road haul, and you can't get away from them, and a certain sum should be set aside for terminal services at origin and destination before you start to construct the scale. In the second place, we have a road haul, and it don't make any difference whether it is five miles or whether it is 500 miles, the cost per mile, actual cost of handling that traffic per mile, doesn't vary in this way (Rec., 909). You take on short haul traffic, they say that short haul traffic costs more to handle than the long haul traffic; I will say this, that in connection with very long haul movements as a general proposition, you have exactly the same kind of service up to the first division point, in other words, you have local service, unless it originates at a division point itself, you have local service in a local train up to that division point. If it is put in a through train for through service, it has also been my experience that as a general proposition sand and gravel is not given very much through service, it is to this extent, that they will put it in their through trains to fill out the train if they don't have sufficient tonnage otherwise to fill out the train, but otherwise it usually moves over the division, on the division in merely local service just to fill out their trains. So this idea of saying that because traffic receives a through movement, it is less expensive where it passes over two or three divisions, I think is offset by the fact that everytime that car passes through one of those division points, there is an additional terminal charge, which is not the case where you have a [fol. 392] short haul movement of any distances 50 to 100 miles. Therefore I do believe that the same rate per ton per mile for the road haul service to give the carriers a proper measure of revenue, and to provide due differentials, should apply throughout the entire mileage as far as you want to carry it (Rec., 910); and to that sum there should be something added for the extra cost of the service where interchange is made between two carriers. Now,

in taking 40¢ terminal charge, I have tried to be extremely careful, and I don't think there could be any objection to a terminal charge of 40¢ a ton, and I have used 5 mills per ton per mile because at 100 miles, 200 miles, 300 miles or 400 miles, it seemed to me to represent about what the carriers should receive for the transportation of these materials. Under the total rate, you will find the combined result of using the 40¢ terminal charge plus an earning of 5 mills per ton per mile for the road haul for all distances; and in the next column, the proposed scale, we merely dropped the odd cents, at every 10 miles, making the rates end in 5 and 0.

In comparison with that, I show the complainant's scale, and you will note that at 230 miles the rate on sand is $1.15, and on gravel, slag and crushed stone $1.25, as compared with the carriers' proposed scale, $1.53, my scale would work out $1.55; in other words, I start with exactly the same amount as the carriers, 45¢, at 230 miles I have $1.55, but the intermediate rates are properly graded, without any so-called cuts that have been talked about in these proceedings. In other words, there is exactly the same allowance per ton mile and the same terminal charges allowed throughout all these distances (Rec., 911). The rates by using such a method for the longer hauls would be on a considerably higher basis than at the present time, [fol. 393] but if the rates under General Order No. 28 had been increased 25% for those long hauls, instead of 20¢ per ton, these rates would more nearly approximate the basis which would be in effect if the 25% increase had been granted, and it just goes to show that for the long hauls, such as 450 miles, that even under the carriers' scale, it really is not a proper level of rates so as to provide the proper progression and to allow the carriers what they are entitled to based on the mileage hauled.

Mr. Burchmore: Exhibit No. 227 is offered on Mr. Brooker's behalf.

Commissioner Lewis: It will be received if there is no objection.

(The statement was thereupon received in evidence, marked, "Intervenor's Exhibit No. 227, Witness Brooker.")

Yes, I was general manager of a railroad for a year and a half, a small railroad, in charge of operations (Rec., 912).

Cross-examination.

By Mr. Gwathmey:

That railroad was the Pittsburgh, Lisbon & Western R. R., with about 47 miles of track.

Commissioner Lewis: Mr. Morris do you want to file something?

Mr. Morris: Yes, sir, I have one statement I would like to offer in behalf of everyone; that is a statement that Chairman Patterson asked me to prepare of the shipping points in Georgia, South Carolina, North Carolina and Mississippi. I don't know whether it should be as an exhibit, or in what way you want to receive it.

[fol. 394] Mr. Mohr: State how that exhibit was prepared, where you got your data?

Mr. Morris: The statement was prepared from information furnished me by all of the parties in the case.

Mr. Mohr: Present here?

Mr. Morris: Present here, and we merely assembled it and had it typewritten.

Commissioner Lewis: Let's see if we can't get this in the record as Stipulation A.

Mr. Walker: I think we might state that it is not admitted or to be understood that these are the only producing points in this territory; that constitutes a list as I understand it, complete insofar as Mr. Morris could obtain it at that time.

Commissioner Lewis: With that limitation or saving clause, will it be accepted as stated as a list of the shipping points of these commodities?

Mr. Gotterill: It is accepted by the complainants and supporting intervenors.

Mr. Massengill: Norris, Ga., doesn't appear in this list.

By Mr. Gwathmey:

No, sir, the list of points in C. F. A. Territory which I read as not included in Mr. Doss' Exhibit No. 77, does not cover all sand and gravel shipping points in C. F. A. Territory; I can give you 100 more if you want them. I could have put in an exhibit of 100 pages showing exactly the

same situation as I show by pages 28 and 29 of my Exhibit 225 (Rec., 914).

Mr. Gwathmey: It will perhaps be recalled that at the conclusion of Mr. Doss' testimony it was understood that [fol. 395] he would later file a copy of a statement prepared by the United States R. R. Administration showing rates assessed on actual shipments of sand in carload lots during a certain period. The exhibit which Mr. Doss filed here, let me explain, was taken from that compilation. I have a copy here now, but not enough copies to file, and in view of the very apparent disparity as we see it between the rates shown on the Railfoad Administration's compilation and the exhibits filed by Mr. Brooker, I shall ask leave to add also to the exhibit Mr. Doss will file the present rates as they would be today between the points shown on that exhibit.

Mr. Brooker: I don't think there is any question at all but what the sand produced at Ottawa, Ill., is glass and moulding sand, and there is one of your illustrations. I think those are glass and moulding sand shipments and not building sand.

Commissioner Lewis: Have you a request here before us to be passed on or ruled on? Mr. Waters thought you had.

Mr. Gwathmey: The permission was granted yesterday, and I wanted to show the actual rates rather than the rates that are shown on the tabulation itself which was compiled by the United States Bureau of Statistics.

Mr. Burchmore: I believe that was objected to; I thought you were to bring in this exhibit for our inspection.

Mr. Gwathmey: Here it is (Rec., 915).

Mr. Burchmore: I am going to object to what you are asking for here. Mr. Dallas of the Baltimore & Ohio R. R., representing the Railroad Administration, filed with the Commission in the C. F. A. Sand & Gravel Case a statement about the size of a daily newspaper of representative movements in which he showed the rates and the [fol. 396] origin points and destinations, and which related in part to common sand and in other parts to moulding sand, and I thought it was that exhibit that your man referred to; it is not the exhibit which you now tender, and

in glancing at this statement, I certainly did object to that being put in as a statement of the rates and movements on common building sand, and we could rebut it if we had the opportunity.

Mr. Gwathmey: I think it is well to call attention to the caption of this compilation, which was made by the Railroad Administration, that will explain what it purports to be. It reads: "Statement prepared by the United States Railroad Administration showing rates assessed on actual movements of sand in carload lots to, from, and between points in Central Freight Association Territory during the period July 1st, 1918, to February 29th, 1920." Then follows a list of the origin points, a list of the destination points to which the traffic moved, the distance and the rate for that distance and on that movement, together with the tariff references. I ask leave to show the present rates instead of the rates shown on the statement (Rec., 916).

Mr. Brooker: If the carriers will put this into the record in just the manner described by Mr. Gwathmey, I have no objection to it, because this statement itself shows that it covered the actual movements of sand.

Mr. Gwathmey: Absolutely.

Mr. Brooker: Whereas Mr. Doss' exhibit as it went into the record said it applied on sand other than glass and moulding.

Mr. Gwathmey: It showed the actual rates on the sand.

[fol. 397] Mr. Brooker: Other than glass and moulding, that is the way your exhibit read; if he excludes the application of rates on glass and moulding sand from that exhibit, if it is put in to make the Commission believe that it applies on building sand only——

Commissioner Lewis: This just designates sand.

Mr. Brooker: Not the sand; if Mr. Doss' Exhibit is corrected that way, I will have no objection to the exhibit.

Mr. Doss: I showed the common sand rates instead of moulding and glass sand.

Mr. Brooker: Yes, but there is no building sand produced at those points, and therefore it could not reflect the proper level of the rates.

Mr. Gwathmey: What points have you in mind? (Rec., 917.)

Mr. Burchmore: Well, here is Ottawa, Ill., and Utica, Ill., and lots of towns like that which in repeated cases before the

Commission it has been shown produce silica sand, which moves to glass factories and such industries as that, and moves great distances, thousands of miles, under very high rates per ton, that is from $1.50 to $2.00 and $3.00 and $4.00 a ton; that is an entirely different situation from the common sand.

Commissioner Lewis: You are offering this for the record?

Mr. Gwathmey: Yes, sir.

Commissioner Lewis: And the title says it is simply sand, and that these are the rates actually assessed?

Mr. Gwathmey: Yes, sir.

Commissioner Lewis: Can there be any doubt about that; is there any objection to that coming in the record?

Mr. Burchmore: Not if the record may show that those points are shipping points for other kinds of sand that [fol. 398] move long distances.

Commissioner Lewis: Why should the record show that; he doesn't offer it to show that.

Mr. Brooker: I think I can clear it up. In Central Freight Association Territory, the biggest difference between the glass and moulding sand rates and your common sand rates was made at the time that the carriers reduced their rates to 115% of the rates in effect prior to August 26th, and they did not make a similar reduction on the higher grade sand (Rec., 918), they then made two rates to apply from the glass and moulding sand shipping points, and made the building sand rates from those points to reflect that reduction; there is no actual movement from those points, and the rates are on a higher relative basis than your actual shipping points of your building sand.

Commissioner Lewis: Mr. Gwathmey's further motion or request, or whatever you may term it, is to show also the present rates for those same origin and destination points.

Mr. Gwathmey: On common sand.

Commissioner Lewis: Is there any objection to that?

Mr. Brooker: I have no objection if I may be permitted to put into this record another exhibit showing the actual rates on building sand between points in C. F. A. Territory.

Commissioner Lewis: When can you file it?

Mr. Brooker: Within ten days.

Mr. Walker: I understand now you are going to file an exhibit showing the rates on sand from all points in C. F. A. Territory?

Mr. Brooker: I am going to take and file about thirty pages more of the same character of rates that I filed here on my pages 27, 28 and 29, more numerous producing points in Central Freight Association Territory that actually produce building sand and gravel (Rec., 919).

[fol. 399] Commissioner Lewis: It looks to me that you are overemphasizing this thing, here this is away up in another territory, it seems to me you are needlessly loading up this record. Mr. Gwathmey's request here is to file the present rates on ordinary sand, isn't it, from those points of origin?

Mr. Burchmore: With the tariff references, I have no objection.

Mr. Gwathmey: The identical points as shown on the compilation made by the Railroad Administration.

Commissioner Lewis: In your argument, you can punch it full of holes if there are any holes to be found. It is accepted.

By Mr. Brooker:

I should say that 450 miles would practically be the maximum distances, except when you go to ship to Florida points, and of course there you have the Jacksonville combination taken into consideration (Rec., 920).

Q. Should the scale continue notwithstanding the Jacksonville combination?

A. I wouldn't want to state in regard to that, because I don't think the situation is exactly the same on these materials as it would be on class traffic. I haven't gone into this question, but I don't see any particular objection to through rates, although I would not advocate it.

Commissioner Lewis: Mr. Doss, how far do you think the scale should run down here in miles?

Mr. Doss: We have never tried to work a scale beyond 450 miles on these low grade commodities.

Mr. Brooker: I think that is as far as any shipper is [fol. 400] entitled to go.

Commissioner Lewis: Has anybody any thought that 450 or 460 miles is not sufficient?

Mr. Cotterill: Slag moves within Southern Territory 900 miles or more excluding Florida, no, not excluding Florida, but it will move six to seven hundred miles excluding Florida (Rec., 921).

By Mr. Brooker:

The carriers never have complained of their low earnings on the long haul traffic. As to the mileage scales shown on sheets 21 and 22 of my Exhibit No. 225, I think they are applicable intrastate in Georgia; I am not certain. Those scales had been fixed by the Georgia Public Service Commission; but the brick rates are both state and interstate, except the Georgia Commission on common brick extending the scale beyond 150 miles. I have no information as to the movement at all of potatoes, cottonseed, sewer pipe and drain tile in Georgia under those scales (Rec., 922).

In compiling my revenue per car on common brick I used an average loading of 36 tons. I cannot state that those rates on common brick are subject to a carload minimum of 80,000 pounds. I know that I took those average loadings from the I. C. C. reports of average loadings. I am willing that those figures should be corrected to the basis of 40 or 45 tons; it won't make any difference (Rec., 923).

No, I didn't use on page 19 of my Exhibit a single line scale applicable from C. & W. C. stations in comparison with the joint line maximum scale under the carriers' proposal; I used the present published rates.

[fol. 401] No, the Commission in that case didn't prescribe the single line and joint line scales; they approved specific rates published by the C. & W. C. Ry. In approving the rates, if I am not mistaken, the Commission suggested some changes but what they were I don't know. That was to be applied by the carriers over the C. & W. C. and the Coast Line as a single line scale (Rec., 924).

It looks as if there is an error on page 9 of my exhibit; a jump from 144 to 182 miles, and $1.80 to $2.10; I am willing to have that corrected, and under the column head, "Present Rates, Georgia Scale" I am willing to have it corrected if the rate should be figured via the joint line

route through Fort Valley, Ga., so as to give $1.10 instead of $1.30.

As to the length of my familiarity with Georgia rates, I participated in the original Georgia hearing back in 1920 and 1921 and have been in touch with it more or less since then (Rec., 925).

Yes, I testified in the Pennsylvania case, Docket 15329, and am familiar with the adjustment up in that territory. I produced a similar statement in that case; I put in actual shipments from some of the points up in that territory. I don't remember that I showed what the production was in the Central states, including Illinois, Indiana, Michigan and Ohio. The production up there as compared with the production in Southern Territory is very much greater. In the Pennsylvania case I also presented data showing the operating and traffic density conditions (Rec., 926).

Yes, I presented the Southern interstate scales to the Commission in the Pennsylvania case. The data I presented to the Commission in that case demonstrated that the conditions in that territory warranted lower rates than in the Southern Territory, but the carriers contended that on account of the heavy traffic density it would cost them [fol. 402] more to handle their business in that territory than it did in the South. I presented a scale to the Commission for application in that territory (Rec., 927) and I think it started at 40¢ or 45¢ per ton for the short hauls, $1.00 a ton for 100 miles and $1.40 a ton at the 200 mile distances.

Q. I only have your scale up to 100 miles. I will ask you if you will question this statement, that the scale proposed by you in that territory in every instance is higher than the scale you are proposing in the Southern Territory with the exception of the distance of 25 miles?

A. I don't know how it compares. I will say this, though, that we had a different situation up in that territory, because you take the rates, for instance our Group 1 rate from Pittsburgh to Johnstown, the existing rate there is $1.40 per ton for a haul of 75 miles; it wasn't felt that we could suggest as low a scale as we could have suggested in view of the large reductions that were involved. I would say some of the rates were reduced 40% (Rec., 928).

I think the Commission provided for a different grouping entirely than the scale which I suggest. I think they prescribed a 20-mile grouping and started the rate at 60¢, but at 100 miles that was exactly the same rate, at 200 miles it was exactly the same basis that I proposed. For purposes of comparison, just as I have put in this scale right here, I submitted in the Pennsylvania case the Southern Ry. proposed interstate mileage scale. The Commission had before it in the Pennsylvania case the Indiana Scales and other Central Scales shown on page 26 of my exhibit. I am familiar with the shipping points in the territory covered by my exhibit, page 29 (Rec., 929).

[fol. 403] Without checking it I don't know the distance from Bloomfield to Effingham. I presume it is around 94 miles. I don't have the rate from Bloomfield to Effingham. The I. C. has some very high rates in that territory. No, I would not be surprised if it is $1.08. Yes, I am familiar with and participated in the agreement which led to those compromise rates that have just been put in up there. No, the rates in my exhibits were taken from the published tariffs. I don't know the distance from Pekin to Effingham without checking it and offhand I don't know the rate for 138 miles (Rec., 930). I don't know that it is $1.21.

I think you will find that the rates in that Central States Territory are more or less competitive rates. I have numerous other illustrations of that sort. I have read the memorandum of the conference that fixed the Illinois and Indiana rates (Rec., 931). The carriers insisted on sticking a provision in that agreement that none of those rates are to be used for comparative purposes as reasonable rates, because that was a part of the agreement.

Redirect examination.

By Mr. Burchmore:

In the Pennsylvania Sand & Gravel Case, concerning which I have just been questioned by Mr. Walker, the defendant Pennsylvania R. R. said the operating conditions in the Pittsburgh District or in Western Pennsylvania were very difficult, and made a special point of congestion, grades, curves, and the mountain conditions north of Pittsburgh.

By Mr. Walker:

No, I don't think they are any more difficult under your present mode of operation than the conditions on the Fort Valley Branch of the Southern Railway (Rec., 932).

[fol. 404] By Mr. Burchmore:

Q. On this proposed statement Mr. Gwathmey is going to file, made up from a Railroad Administration exhibit of an unknown number and an unknown docket by an unknown witness, I will say that because no number appears on the exhibit, or name of the witness or number of the docket appears on it, do you know whether gravel, and I don't say sand, but gravel, is shipped in any quantities from Michigan City, Ind.?

A. No, that is mostly lake sand up in that territory. Ottawa and Oregon, Ill., are producers of gravel. Ottawa produces glass or silica sand and I think Oregon produces some sand and gravel, and that is the only production at those points.

By Mr. Cotterill:

If you are talking about the Eastern Territory, I may not be able to give you such definite information, Mr. Cotterill, but if you talk about the Central States Territory I would say the average movement in that territory would be about 65 miles for hauls of the products here involved (Rec., 933).

The Pittsburgh District would be about the same on a general average. I don't know that slag would be included under the old rates, because the rates on slag in that territory were the same on a general average. I don't know that slag would be included under the old rates, because the rates on slag in that territory were formerly on a lower basis than your gravel rates and undoubtedly the average mileage would be somewhat greater.

Q. In any consideration of mileage scales in the Northern Territory, would all of that be considered in arriving at the measure of the rate for hauls over 75 miles; in other words, are they not substantially meaningless?

[fol. 405] A. Well, it all depends on the territory that you are in; if you get over to Indiana, moving to Illinois, you

do have movements over there from 100 to 130 miles, but in the eastern part of the state you don't have those movements. It is an almost unknown thing in the Northern Territory for such products to be moved 400 to 600 miles, because of the numerous plants up there (Rec., 934).

Q. Now, you indicated to us that if given reasonable employment, you could prepare a scale that will adapt itself to the needs of any particular clients that at the moment you might be serving?

A. Yes, sir. In this particular instance I am representing a producer of crushed stone in Columbia, S. C., and some crushed stone producers in Georgia, as well as a producer of sand in the Fort Valley District. The competition which all of my clients encounter is with slag from Birmingham and with the producers of sand and gravel in Montgomery.

Q. In the construction of your mileage scale, your objective has been to achieve as high a rate of progression as can be accomplished, has it not?

A. It does not, I don't care what factors you use, whether you use four mills or whether you use 30 cents a ton terminal or anything else, you reach the same result in working out a mileage scale (Rec., 935).

I don't understand what you mean, Mr. Cotterill.

Q. Well, in adding a given constant terminal factor and a line haul factor, your line haul factor could not conceivably under any circumstances increase in cents per ton at a greater rate than the same ton per mile for a long or a short haul, is that clear?

A. No, it is not.

[fol. 406] Q. All right. You took a line haul factor of what mills per ton miles?.

A. 5 mills per ton per mile.

Q. Yes, and you used that constant line haul factor throughout the length of your scale?

A. Yes, sir.

Q. To illustrate my point, could you begin at 5 mills to start with, and wind up with 8 mills at the limit of your scale?

A. No.

Q. That would be irrational?

A. Yes, sir.

Q. Now, taking that extreme illustration, would it be except in degree equally irrational to have your ton mile line haul factor any greater at the tail end than in the beginning? (Rec., 936.)

(Question read)

A. I don't know what you mean.

Q. All right, you have agreed that you could not make your line haul factor 5 mills at the beginning of it and 8 mills at the end of it, haven't you?

A. Yes, sir.

Q. Will you agree with me that you could not make consistently your line haul factor 6 mills at the end of the scale and 5 mills at the beginning?

A. Yes, sir.

Q. You will agree with me then that you could not with any degree of consistency under any theory of rate making publish a scale within which is contained a rule of progression any higher than you have conceived in your scale here?

A. I will have to ask you to read that.

[fol. 407] (Question read.)

Q. Well, Mr. Brooker, you have just agreed with me that your theory was to add a given constant terminal factor?

A. Yes, sir.

Q. And a line haul factor?

A. Yes, sir.

Q. You have agreed with me that there would be no consistency or propriety in any such scale if your line haul factor should be a higher ton mile charge at the end of the scale than at the beginning, you agree with that, don't you? (Rec., 937).

A. I think it should be the same rate of progression all the way through.

Q. Apart from your thought that there should be the same rate of progression, is there any conceivable plan under which it should be higher at the tail end of the scale than at the beginning?

A. I don't think so.

Q. Then does it follow to your mind that you have conceived a formula which produces the highest possible rate of progression that any degree of logic could possibly approve of?

A. No.

Q. Can you conceiv[illegible] any possible higher rate of progression than that?

A. Yes, if you used 6 mills and a 30¢ terminal.

Q. If you mean by that to reduce your assumed terminal factor, of course, obviously, but if you have determined a proper terminal factor to begin with, could you produce any higher progression in a scale than you have?

[fol. 408] A. Yes, by increasing the allowance per ton mile.

Q. And produce the inconsistency of a higher ton mile allowance at the tail end than at the beginning in the line haul factor?

A. No.

Q. You don't agree with that? Now, at least you will agree with me, Mr. Brooker, that it is to the peculiar interest of (Rec., 938) your clients in this case to obtain a mileage scale, irrespective of its level, that will produce as high a rate of progression as you can obtain approval of, isn't it?

A. No, sir.

Q. Would you have any interest in a low curvature or rate of progression?

A. My interests are absolutely opposed to any scale which has got any bumps in it.

Q. Granting that.

A. Or that does not provide the proper spread as between the different distances.

Q. Granting that, we agree that there should be a proper spread, but you have an interest, have you not, in making that spread as high as you can produce it, haven't you?

A. I wouldn't say that, if you are talking about Jacksonville.

Q. No.

A. The Columbia rate will be increased 40¢ a ton under this proposition, with the differential which is now in effect today, it will remain practically the same.

Q. I didn't have Jacksonville in mind, but taking the territory as a whole, your commodity, rock, has a price 50% [fol. 409] and greater than the competing commodities, under those circumstances your objective, is it not, is to obtain as high a scale as you can in its progression, is it not?

A. No, I was trying to be fair to the carriers and fair to everybody (Rec., 939).

Q. You still think it would not be a higher progression than your scale would produce?

A. If you wanted to apply it to greater earnings per ton mile, you might, yes, but I don't think the 4 mills per ton mile earnings for the road haul would be a fair basis for the carriers.

Q. You are thinking in terms of the revenue producing quality of the scale, and I am thinking in terms of the theory of progression.

A. The Theory of progression has to be governed by the amount of transportation involved, Mr. Cotterill, I don't think there is any difference between the cost of transporting these commodities 500 miles per mile than for handling them 50.

Q. In that respect, Mr. Brooker, you were governed I think you said by the conviction that after certain distances are reached, there is a duplicate terminal service, which again starts the costs over again, something to that effect?

A. I said that you had local train movements in connection with the origin and delivery of most of the movements of sand and gravel, except where it moves between big terminals, and whether the business is handled 50 miles, or whether it is handled 5 miles, every shipment you have has a certain amount of that local movement, except if it is moving between two big centers (Rec., 940).

[fol. 410] I didn't participate in the Southern Class Rate investigation. I know what the Commission in its decision in that case regarding class rates but don't think it applies on these low grade commodities. The handling of class traffic is always given a different class of service than handling of these low grade commodities. The higher the grade of traffic the more expedited service is given to it. On these low grade commodities, except when there is a special movement from Birmingham or Montgomery to Florida, where they almost give it passenger train service, the average movement is in slow moving trains (Rec., 941).

I took the carriers' minimum rate of 45¢ per ton for a 5-mile haul in formulating my judgment of what would be a proper terminal factor for the construction of an interstate scale and assumed that that would cover the terminal charges plus the road haul movement of 5 miles.

Q. What data did you have available upon the basis of which to compute a ton mile constant line haul factor?

A. That basis was taken because for all distances it occurred to me it would allow the carriers fair revenue for all distances hauled. Well, I took into consideration what the carriers were proposing in this proceeding, for example taking a distance of 200 miles, they were proposing $1.44, and my basis allowed them $1.140; at 230 miles it allowed them $1.53, my basis allows them $1.55, and at various distances, in order to strike the same grade of progression all the way through, you had to use the earnings of 5 mills per ton per mile, and when you had those two outside sources, you formulated your scale and carried it to those other distances. Now, Mr. Cotterill, I will say this, that I tried to take into consideration in formulating the scale this unusual situation brought about by the fact that the rates under General Order No. 28 on your long haul shipments were only increased 20¢ a ton, and to illustrate that I wish to say [fol. 411] that your base rate from Montgomery to Jacksonville (Rec., 942), if it had received an increase of 25% under General Order No. 28, instead of 20¢ a ton, would be $2.38 today, instead of $1.89, and the increase granted at that time it doesn't seem to me properly distributed increases in revenue which the carriers received; in other words, there was a greater burden placed on the short haul rates than on the longer haul rates. Sand and gravel was one of the commodities that was excepted from the general increase of 25%.

Q. Well, in substance then, that then except where that method of general advance was employed as to any commodity the Interstate Commerce Commission now could make a national review of rates, couldn't it, by starting over again at something like a percentage system?

A. I think they could, I said the same thing in the Western Rate Case, that I didn't think a flat percentage increase was the proper rate of progression for all distances (Rec., 943).

By Mr. Walker:

Yes, I spoke of a 20¢ increase under General Order No. 28 and presume the Southern basic scale was reduced from 63¢ to 50¢ before the 10% reduction was made, but in con-

sidering the rates, Mr. Walker, that you suggested for the long hauls, and suggesting them on the basis that you did, you undoubtedly considered the fact that numerous rates throughout the territory for these longer hauls were on a lower basis due to this 20¢ a ton increase instead of the 25% increase. No, I cannot indicate any case where the Commission has prescribed as low a rate as 45¢ for the 5-mile haul; personally I think the minimum rate on sand and gravel should be 50¢ for the road haul.

Yes, I think the average haul in Southern Territory is higher than the average haul in the Central States (Rec., [fol. 412] 944). And my statement is based on the fact that you don't have so many short haul movements in the Southern Territory. I have in my files what the average haul is in Southern Territory based on statistics of shipments which have been supplied me from the best sources, but I haven't it with me now and can't tell you just what it is. It may be that the evidence here is that it is 65 miles on the M. & O. R.R., but when you take into consideration your long haul shipments to Florida it is folly to think that the average haul in Southern Territory is less than in the Central States (Rec., 945).

By Mr. Gwathmey:

The interests I am representing here have indicated to me that they are willing to go along on the present system of making rates into Florida. I think my clients work through Jacksonville in constructing the short line mileages into Florida.

By Mr. Burchmore:

I think it was in 1920 or 1921 that I prepared a proposed mileage scale built on the theory of taking the terminal and adding a line haul for use in another case (Rec., 946).

Since then I have studied this question of what would be an appropriate terminal charge at origin and destination and the use of a constant line haul charge in the various territories, and have been involved in switching cases and made complete studies of switching costs, not in this territory but in other territories. I have ridden switch engines for two weeks at a time making deliveries around the switching district and familiarizing myself with the situation, and it is

my conclusion that the carriers are entitled to at least a 40¢ terminal charge as a general proposition on these low grade [fol. 413] commodities. These two factors of the 40¢ terminal and the 5 mills constant line haul have been under consideration since last January when I was down here and only recently I rearranged the exhibit after I got here to show the comparison with the other scales. It is something I have thought of for several years (Rec., 947).

(Witness excused.)

E. L. HART was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I reside in Atlanta and am employed by the Atlanta Freight Bureau as Assistant Traffic Manager and have held the position for the past five years. I am appearing here in behalf of the membership of the Atlanta Freight Bureau interested in these particular commodities and specifically for the State Highway Department of Georgia, the Counties of Fulton and DeKalb and the City of Atlanta, the Pine Mountain Granite Corporation of Lithonia, the Davidson Granite Company of Lithonia, and the Arabia Granite Company operating quarries at Arabia Mountain. I have prepared certain exhibits, Numbered 228 to 243.

Mr. Watkins: We offer them now subject to objection as we go through and as the witness will take them up.

Commissioner Lewis: The exhibits will be received subject to objection (Rec., 948).

I have just a short preliminary statement I wish to make, Mr. Watkins. Due to the change of procedure, I have discarded the written testimony, and will only deal briefly with such exhibits as I may offer for consideration by the Com- [fol. 414] mission. My testimony will deal mainly with the issues involved in the Thirteenth Section Case, Docket 17517. Upon the filing of the complaints here being considered, and the subsequent Thirteenth Section application filed by the Atlantic Coast Line Railroad, it became

apparent to the interests for whom I am testifying that while the case was to some extent limited in its scope, any order by the Commission as an outcome of this case would necessarily represent a level of rates on the commodities involved that would eventually be applied on state traffic in the Southern Territory as a whole, and my exhibits have been prepared with this general idea in mind.

We are very much concerned with the revenue consequences involved here, as the Atlanta Industrial District is the largest single consuming center of the commodities here being considered in the Southeast, with the exception of Birmingham, Ala. While we have never been able to determine the reason that prompted the Georgia Commission to prescribe its maximum scale, which became effective April 1, 1925, the order of the Georgia Public Service Commission was an enormous increase in rates on these commodities to the Atlanta district, such rates having been in effect for many years, and established (Rec., 949) voluntarily by the carriers, and while we appreciate the fact that the scale prescribed by the Georgia Public Service Commission did in some instances slightly reduce the rates in effect prior to April 1, 1925, the revision from intrastate points, as well as from interstate points into Georgia, as the result of the Georgia Commission's order, undoubtedly resulted in substantial increases in the carriers' revenue on this particular traffic. In fixing a maximum scale for application on the commodities involved here, it is our thought that a lower level might properly have been prescribed by the Georgia Commission.

[fol. 415] I might add right here at this point, that we feel that the Georgia Commission might properly have taken into consideration the facts that these commodities are used primarily for road building purposes, and that in most of the Southern states except Georgia and Alabama, they have municipal rates, and while unfortunately where, under the present Georgia code, the Georgia Commission of course is not empowered to prescribe municipal rates, however we think this factor should have been given its proper consideration in prescribing the maximum scale. It has become evident from the testimony and exhibits submitted by the carriers in this proceeding, that it is also their thought that the mileage scale which they have proposed should apply

uniformly within Southern Territory with certain reservations, and as to this part of it, we are in accord with the railroads, however we do not agree with them as to the level of their proposed scale (Rec., 950).

My Exhibit No. 228 is merely a reproduction of an exhibit which was attached to the Southern Freight Association's Submittal covering the interstate adjustment which it was necessary to make as the result of the order of the Georgia Public Service Commission.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 228, Witness Hart.")

There are seven pages of this exhibit, and as you will observe, each common tariff as it is published was taken, and each rate shown, which would have to be changed in order to clear the Georgia scale. Now, the proposed rates shown here under the present rate is the Georgia Scale, on the Georgia Commission's scale. On the first page of this exhibit on the left hand side you will notice a number of rates on washed gravel from Chattanooga to Georgia [fol. 416] points which are local stations on the Central of Georgia Railway. I recall the witnesses for the Complainants stating that they had no rates out of Chattanooga except the Central of Georgia's interstate mileage scale, and I am merely calling attention to those (Rec., 951).

By Commissioner Lewis:

Q. I didn't catch one thing, you say that the column headed Proposed Rates is not the Georgia scale?

A. No, the carriers in revising these individual interstate point to point rates as the result of the Georgia Commission's order, have merely revised those rates to reflect the Georgia Commission's scale literally, that is if the rates were lower; if the rates happened to be higher than the Georgia scale of course they did not publish them. This exhibit was merely submitted to indicate the scope of the interstate revision made necessary in order to comply with the Georgia Commission's order.

Q. I want to get this clear, a little while ago you referred to the caption or designation "Present rates," and I thought you said they should be the present Georgia rate?

A. No, the exhibit itself was merely a reproduction of an exhibit which was attached to the Southern Freight

Association's submittal covering this interstate adjustment which was made necessary to conform to the Georgia Public Service Commission's order (Rec., 952).

By Mr. Watkins:

Q. The proposed rates mean not your proposed rates in the submittal.

A. The proposed rates are the rates which they proposed, but are the rates prescribed by the Georgia Public Service Commission. In other words, it was necessary to make these interstate revisions to conform with the order of the Georgia Public Service Commission.

[fol. 417] The washed gravel rate from Chattanooga, Tenn., to Dalton, Ga., is the rate now in effect under the Georgia scale, as shown under the proposed rate there; that is the current rate in every case under the Georgia Commission's order. Now, the present rate is the rate that was in effect prior to August 1. There were some exceptions into Georgia on this revision; take on the second sheet there, that is numbered 4, on the right hand corner of Sheet 3 you will notice the rates on gravel from Montgomery to LaGrange, the proposed rate shown there is 90 cents, that is on washed gravel, the same as on unwashed gravel, the Georgia scale is shown opposite that; the carriers were unable to revise that rate to reflect the full basis of the Georgia Scale, due to the fact that those rates had been fixed by the Commission in I. C. C. Docket 13365, which was the Roquemore Gravel Company versus the Atlanta & West Point Railroad Company et al., decided December 7th, 1923. The Commission in that case fixed a rate of 90 cents on both sand and gravel from Montgomery, Ala., to LaGrange, Ga. The 90¢ rate is still maintained at LaGrange (Rec., 953).

On Sheet 6 of this exhibit, but it is shown as 16, they have got a little small 16 there, you will observe, the resulting interstate rates from Western Ry. of Alabama pits to Atlanta and points between Atlanta and West Point, Ga.; I am calling attention to this revision in view of Mr. Browder's statement yesterday that rates from pits on the Western Ry. of Alabama to Georgia points were not on the Georgia Commission's scale (Rec., 954). I think that statement of Mr. Browder's was correct as to some of his rates, but insofar as the rates between West Point, Ga.,

and Atlanta are concerned, they are today on the Georgia scale.

My next Exhibit is a chart indicating the progression of the carriers' proposed scale.

[fol. 418] That is Exhibit No. 229. Exhibits 229, 230 and 231 are charts respectively of the carriers and the Georgia Public Service Commission's scale.

(The charts were thereupon received in evidence, marked "Intervenor's Exhibits Nos. 229, 230, and 231, Witness Hart.")

I merely charted these scales for the Commission's information. It is our view that the carriers' scale does not reflect the proper progression, I feel that the progression is not uniform; in other words, it is too abrupt for the short distance; you will observe how the scale progresses up to distances of 170 miles, at which point it breaks and then gradually and apparently extends on a uniform basis from that point on out to a distance of 460 miles (Rec., 955).

Exhibit No. 230 is a similar chart indicating the progression of the scale prescribed by the Georgia Public Service Commission. While this scale generally speaking progresses uniformly, there is one break in the scale at between 120 and 130 miles, which would have the result of course of causing a hump between the 120 mile block and the 150 mile block. With that exception, the Georgia Commission's scale seems to be fairly well progressed.

That hump is at 130, the hump, to be specific, the hump would be at the 140 mile block, although the progression which causes the hump was at 120 to 130 miles; in other words, they progressed the scale there for 20 miles rather than for 30 miles as they did below; in other words, to progress the scale 30 miles from 90 to 110 miles, they should break it in between 140 miles, which causes the hump there at that break.

My Exhibit No. 231 is a scale which I am suggesting for general application over the trunk lines in Southern Terri-
[fol. 419] tory, applicable on these commodities involved.

By Mr. Watkins:

Q. What is your 232?

A. 232 is a chart indicating the progression of this scale.

Q. The progression of your proposed scale?
A. Yes, sir.

(The chart was thereupon received in evidence, marked "Intervenor's Exhibit No. 232, Witness Hart.") (Rec., 956.)

Exhibit No. 233 is a comparison of the three scales, the carriers' proposed scale, the Georgia Commission's scale and the scale which we proposed.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 233, Witness Hart.")

The chart speaks for itself and is merely prepared to indicate the level of the progression of the three scales. Exhibit No. 234 indicates the progression by miles and rate of the three scales which have been previously charted.

You will note by referring to the Georgia Commission's scale, where that hump occurs at 110 miles, you will see the added miles is 30 miles, 10 cents, and 130 miles, you see the added miles is 20 miles, then 160, then 30 miles again; in other words, the break shows in there which caused that hump that I referred to in the chart (Rec., 957).

My Exhibit No. 235 is the comparison of certain scales as indicated; what I had in mind was to use the comparisons to indicate the breaks in the various scales.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 235, Witness Hart.")

[fol. 420] Of course right here I might say that I do not agree with Mr. Brooker in the way he has made his scale, and I have never been able to find but very few scales where these heavy moving commodities that are based on that theory, and I did not develop my scale on that theory, and I simply submitted my scales and some of them that have been prescribed by the Commission to bear that out.

There is one error there in the scale, Sheet 4, I show it as Docket No. 9703, it should be 9702, the Memphis-Southwestern Scale. While this scale has been offered I think by some of the shippers' witnesses, I don't recall that any of the carriers submitted the scale as such for comparative purposes, but possibly the reason for it was that the scale

was lower than their proposed scale for certain distances, particularly the shorter distances, and it is there that we make our attack on the carriers' proposed scale, in the shorter distances (Rec. 958).

Before I leave that exhibit, I recall that there was some discussion yesterday about this administration scale, that is the averages of the scale which the administration got out during Federal control for application over the Trunk Lines in Southern Territory; you will observe in Column 2 of Scale 2 there, it represents the averages of those scales both on crushed stone, gravel, slag and sand; the Administration at that time did offer a different scale on crushed stone, gravel and slag than on sand.

Exhibit 236 is a chronological statement of the rates from representative shipping points into Atlanta.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 236, Witness Hart.")

[fol. 421] I think Mr. Brooker stated the fact that the rate prior to June 25, 1918, was 30 cents from Georgia pits to Atlanta, the original or origin of the rates from the Alabama pits was generally speaking 5 cents over the Georgia pits at the time they were established; in other words, those rates were made 35¢ to Atlanta, or 5¢ over the rates from Gaillard and Rollo, that is on sand (Rec., 959).

My Exhibit No. 237 is similar to 236 except that I have shown there what the rates would be under the carriers' proposed scale and the increases under that scale, as well as the same comparisons made with the scale which I have suggested, and the rates which became effective on August 1st under the Georgia Commission's scale.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 237, Witness Hart.")

Exhibit No. 238 is a comparison of the rates on brick as prescribed by the Commission in I. & S. Docket 1885, with the carriers' proposed scale, the Georgia Commission's scale, and the scale which I have suggested, and the exhibit indicates the per car mile revenue on the basis of Montgomery, as shown in the caption of the exhibit.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 238, Witness Hart.")

I think it is a fact that the loading of face brick would probably be in excess of 50,000 pounds, but I think the comparison used is fair, that is, the ratio*n* is fair (Rec., 960), 50,000 pounds as against 70,000 pounds on these other commodities. But to illustrate this point, there is located at Sibleyville a large brick manufacturing plant, that is they manufacture face brick, and ship to Atlanta, that will come within the 175 mile group; on the basis of the minimum on brick of 50,000 pounds, the earnings would be $50.00 per car; on the basis of the carriers' proposed scale from Birmingham to Atlanta on slag, which would come in the same group, it would be $49.00, using 70,000 pounds, or only [fol. 422] $1.00 less than on a car of face brick. In other words, there is no comparison in the valuation of course of brick and slag. I have just merely cited that instance, I imagine when the actual loading was taken into consideration, you would have a per car revenue on slag much in excess of your brick revenue from Birmingham district to Atlanta.

My exhibits 239 to 242 inclusive are mere rate comparisons and have perhaps been offered either by the carriers, the complainants or the intervenors at some point in the case.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibits Nos. 239, 240, 241 and 242, Witness Hart.") (Rec., 961.)

I do recall, however, that Mr. Crane in his testimony made reference to some departures from their proposed scale, and had in mind LaGrange, Tenn., to say Chattanooga; this too is shown on my Exhibit 239; however, he made no mention of the rates which are published from those points to the Birmingham district, which I have also shown on my exhibit.

My Exhibit No. 243 is, you might term it I guess a revenue statement, it purports to show the tonnage for road building purposes of the materials involved here in Fulton County and the City of Atlanta during the calendar year of 1925.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 243, Witness Hart.")

That exhibit just refers to the governmental agencies of Fulton County and the City of Atlanta and does not

include the commercial uses of these commodities. I have not included DeKalb County, the City of Atlanta being partly in that county (Rec., 962), but taking the two counties and the commercial uses, I would imagine that this statement would represent about one-third of the actual [fol. 423] tonnage. The total increase would be about three times what is shown on Exhibit 243. The exhibit indicates under the Georgia Commission's rates which became effective August 1st, that Fulton County, taking it on a year's basis, it would increase their freight account $48,935.00; under the carriers' proposed rates, using the same tonnage, it would increase it $63,445.00 over the rates that were in effect prior to August 1st. Now, to the city the increase under the Georgia Commission's scale and these increases we have already gotten amounts to $65,480.00, and under the carriers' proposed scale, $99,790.00, or a total of $114,415.00 under the rates that we have already got in effect, and $163,235.00 under the carriers' proposed scale. I think it a correct estimate to say it reduces one-third of the traffic.

In that exhibit the effective date of the rate should be August 1 instead of 7-1-25. There may be other typographical errors but I don't think they are of any consequence (Rec., 963).

It is my idea that my scale should be applied to all the commodities involved in this case. I see no reason for a joint line scale on these heavy moving commodities over the trunk lines.

In the Brick Case, of course there was a joint line scale prescribed for distances under 100 miles, and I think the carriers themselves have used that distance in most of their adjustments on heavy moving commodities, such as cement and lime, but in the study I have made of it, I don't see any reason why there should be any joint haul for above 100 miles.

I think there is clay and shale shipped into this territory to manufacturing plants, but to my knowledge none is used for road building purposes. As to the scale offered by the complainants here we of course would feel the same towards that scale as we do towards the (Rec., 964) carriers' scale, in view of the fact that the progres- [fol. 424] sion is certainly too rapid at the beginning. It creates a situation whereby the short haul traffic certainly

has to bear an undue proportion of the charge as compared with the low haul traffic.

Q. Have you made your scale to fit anybody's particular pits?

A. No, sir, that is unfortunately I had no particular pits to fit, and I tried to make a scale that I thought would not result in too much revenue, and at the same time progress properly and uniformly, and having in mind also that probably the breaks in these scales should be for greater distances than five miles, as proposed by the carriers and by Mr. Brooker; of course, that is just a difference of opinion, that is all; the Commission may be able to decide that.

Cross-examination.

By Mr. Walker:

When I dealt with Exhibit 239 I merely said that Mr. Crane yesterday suggested that there might be a situation from LaGrange to Chattanooga we might want to depart from because of local competition and that we had in fact done it (Rec., 965).

I have stated before that in most of the states surrounding Georgia and Alabama they have these low municipal rates and those rates move about 80% of the traffic. Obviously I didn't have the tonnage to consider the revenue effect the adoption of my scale would have on the carriers' scale in the Southern Territory as a whole. I heard Mr. Crane's testimony that only 20% of these commodities moving over the Southern moved in Georgia (Rec., 966).

There is a movement in the Carolinas on municipal rates, I don't know how much. They have municipal rates in North Carolina and I think in South Carolina, but none in Alabama or Georgia. I made that statement as being the fact as regards the Southern Railway.

[fol. 425] By Mr. Brooker:

The distance from Stone Mountain to Atlanta is 14.9 miles, from Lithonia to Atlanta is 24 miles. There was no particular reason for my making my first grouping 10 miles instead of 15 under the Georgia Scale. I merely set about making a scale that would progress properly and I used

the terminal of 40¢ which I thought might be all right (Rec., 967).

I represent certain Lithonia interests in this proceeding But my scale was not constructed with the idea of giving Stone Mountain the same rate as Lithonia to Atlanta. It does have that effect, and the examination of the scales you have compared in your exhibits shows some of them break either at 20 or 30 miles and mine break at 10 to make a symmetrical scale. The Georgia Scale does provide for a certain differential between those two points today but from a strictly equitable standpoint I don't think there should be any difference for those pits that are within a radius of 25 miles to Atlanta (Rec., 968).

By Mr. Gwathmey:

I didn't say 80% of the sand and gravel in other states moves under special or municipal rates. I said I had in mind that the bulk of the movement in Georgia is for road-building purposes and I presume that was the fact in other states, especially the Carolinas and Florida. I have not investigated to ascertain the proportion of this traffic in other states under municipal rates. I imagine the preponderance of the movement in Florida or Louisiana are on the lower rates. That is hearsay because I have not been able to verify it. The principal difference between my scale and the railroads' scale is that my scale represents substantially lower rates for the relatively shorter distances (Rec., 969).

[fol. 426] If my scale were substituted for the railroads', it would not, as far as Atlanta is concerned, mean a substantial reduction in rates for the shorter hauls. I have not charged myself with the duty of looking out for the interests of the particular shippers and did not suppose I should give much consideration to the interests of the railroads. I probably was more considerate of the interests I represent; we are the fellows who pay the bill and are vitally interested in what these commodities will cost us. I don't think there is so much difference between our scales on what would be the earnings per ton mile for a distance of 500 miles (Rec., 970).

For 300 miles my proposed rate would be $1.50, which is 5.2 mills per mile. Yes, I propose to apply that scale

whether the haul is over 1 or 2 or 3 lines. I have not divided the rate where 3 lines participated in the haul, each one hauling it 100 miles.

You have the same situation in brick, and you proposed the same situation in your cement and lime rates, all on a single line scale for 100 miles. I don't know that if three roads participated in a haul of 300 miles and got 50¢ apiece for a haul of 100 miles that it would be a reasonable maximum rate. If we didn't have anything to consider but just these commodities it might be a different story. Under the law you can haul it, as far as municipal rates are concerned, for nothing (Rec., 971).

That might aid you in some cases. I recollect some men at the Georgia Commission in 1921 trying to show you that but they didn't get very far.

(Witness excused.)

[fol. 427] E. M. PRICE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

My name is E. M. Price. I am connected with the Georgia Public Service Commission, with the title of Rate Expert, which position I have held since October 1st, 1919. Prior to that time, and subsequent to 1889, I was connected with various carriers in Southern Territory in various capacities.

The matter of rates on sand, gravel, crushed stone, etc., had been under consideration by the Georgia Commission for several years prior to its final order of February 25, 1925. In 1916, the Georgia carriers filed petition with the Georgia Commission for approval of a general revision of all rates, and after hearings lasting over a period of several months, the Commission issued an order on April 3, 1918, to become effective September 15, 1918, which revised all class and commodity rates within the state; however, the effective date of this order was later suspended by the Commission, due to the fact that the carriers were taken over by the Government (Rec., 972) under Federal control, and this condition lasted until March 1, 1920. Realizing the necessity for a general revision of all rates the Georgia

Commission on July 14th, 1921, directed a Rule Nisi to all Georgia carriers to submit to the Commission schedules of class and commodity rates that would remove all discriminations and would in the aggregate preserve the carriers' revenues. The hearings on this show cause order began in September, 1921, lasting over a period of several weeks, and as a result of these hearings the Commission first prepared and submitted to carriers and shippers for criticism schedules of class rates, and after these criticisms the revised class rates were ordered into effect May 1, 1923. [fol. 428] Subsequent to the class rate order through the same method the Commission has authorized revised rates on cotton, canned goods, brick and other clay products, road oil, velvet beans, cottonseed, peanuts, waste wood, furniture, limestone, iron and steel articles, and sand, gravel, crushed stone, etc. Attention is directed to the work accomplished in this general revision that your Commission might know that the sand and gravel adjustment has not been selected by the Commission for the purpose of any special treatment, but is only a part of the general revision, which the Commission now has under consideration, it being the purpose of the Commission to continue these revisions until it has completed the work of revising all rates in Georgia (Rec., 973).

In Section 5, of the commodity rate orders, the Georgia Commission has provided: "That in no instance shall the rates on the commodities covered by this order be higher between any points in Georgia than the interstate rates contemporaneously in effect in the same commodities, between points in Georgia and points in other states, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul."

In Section 8, the Georgia Commission has provided: "In instances where the carriers establish between any points lower rates than authorized herein, no higher rates shall be charged at any intermediate point, without the approval of the Commission having first been obtained."

The Georgia Commission, of course, has no intention of attempting to control or fix the interstate rates through Section 5, it being the purpose of the Commission to protect the Georgia rate payer against any discriminations that might be brought about through the revision author-

ized in the Georgia Order, and Section 8, of course, was to take care of the long and short haul situation.

[fol. 429] On account of the provisions in Sections 5 and 8, it was necessary for the carriers in several instances, including the rates on sand and gravel, etc., to petition the Commission for a suspension of the effective date, in order that their interstate tariffs might be readjusted to clear the Georgia rates (Rec., 974).

The order authorizing the revised rates on sand, gravel, crushed stone, etc., was issued February 25, 1925, to become effective April 1, 1925. The carriers were unable to comply with Sections 5 and 8, and therefore petitioned the Commission to suspend the effective date until July 1, 1925, which was granted. It later developed that the carriers were unable to clear the Georgia rates with their interstate rates by July 1st, and therefore petitioned the Georgia Commission for a further suspension until August 1, 1925, which was granted. After the rates had been published by the carriers to become effective August 1, the sand, gravel and slag interests in Alabama and Tennessee filed petition with your Commission for suspension, which was assigned to I. & S. Docket 2470. Your Commission declined to suspend the rates that were based on the Georgia Scale, except rates published by the Louisville & Nashville R. R., which your Commission did suspend where they were shown to exceed the Georgia Scale, and in this connection we would like to ask that our testimony and evidence be considered in Docket 17517, and the other related dockets, which are involved in this proceeding, and that you also take into consideration the record that was made in I. & S. Docket No. 2470, at the time you declined to suspend the rates involved in that docket. Is that proper, Mr. Commissioner, that we ask for that consideration? (Rec., 975).

[fol. 430] Commissioner Lewis: I can't pass on that right now.

Mr. Price: Is there any objection to it?

Mr. Cotterill: I have none.

Mr. Gwathmey: No.

Commissioner Lewis: All right.

Mr. Price: That docket is involved in this proceeding here, 2470, we are simply asking that you take into consid-

eration the record that was made to decline to suspend the interstate rates into Georgia.

Commissioner Lewis: Oh, yes.

Mr. Price: We did that to avoid making up additional exhibits.

In fixing the Georgia rates, the Georgia Commission has had in mind at all times, that it was not the representative of any particular interest, but that three distinct interests are involved in these adjustments; first, the carriers who are entitled to such rates as will give them a return on the fair value of their property devoted to the public use, which your Commission has said is 5.75%. Second, the shipper or producer who is interested primarily in the relationship with his competitor, more than with the measure of the rates, and third, the consumer who finally pays the bill and is therefore more vitally interested in the measure of the rate. The Georgia Commission has endeavored to represent these three interests in prescribing rates in Georgia, and I will state further that in appearing here today we are still representing these same interests (Rec., 976).

As I have already stated, a very careful study was made, not only of the rates existing in Georgia, but throughout [fol. 431] this territory, and in prescribing these rates the Georgia Commission feels that they are responsible, not only for Georgia intrastate application, but could well be used as a measure for interstate application throughout the Southern Territory.

The evidence which I will submit, Mr. Commissioner, is designed to give you a picture of the rate situation on these commodities, as found by the Georgia Commission prior to the issuing of its order, and I would now like to file my Exhibit No. 244, consisting of 28 pages. This exhibit has been distributed to all interested.

Commissioner Lewis: The exhibit will be received and made a part of the record, if there is no objection.

(The statement was thereupon received in evidence, marked "Intervenor's Exhibit No. 244, Witness Price.")

Mr. Price: Sheet No. 1, shows the various rate tables and their application, being self-explanatory. Mr. Commis-

sioner, on this exhibit was printed a description that I have failed to furnish a list of the Class A and Class B lines that are referred to in these rate tables; I can state the Class A lines, all other lines being Class B lines in the state, or I can prepare another exhibit (Rec., 977).

The Atlantic Coast Line R. R., Atlanta & West Point, R. R., the Atlanta, Birmingham & Atlantic R. R., Central of Georgia Ry., the Georgia R. R., Seaboard Air Line Ry., Southern Ry., Nashville, Chattanooga & St. Louis Ry., and the Louisville & Nashville R. R.; that represents the Class A lines in Georgia, all other lines in Georgia are Class B lines. They consist of the so-called short lines.

Now, Mr. Commissioner, while we are on Sheet No. 1, a great deal has been said in regard to the hump in this [fol. 432] scale at 110 miles. As I have previously stated, these rates were submitted to the carriers and shippers for criticism before any final order was passed, and the scale that was submitted at that time, and at 110 miles that was 5½¢, there is a typographical error that occurred in the reprinting of that scale and was not detected until after the order took effect. As the scale was criticized, at 110 miles that was 5½¢, or $1.10 a ton. We have not taken any steps to correct it (Rec., 978), because when the Commission did detect it, the order had already taken effect, and we then heard rumblings of this proceeding, and the Commission decided that the best thing to do was to wait and see just what the outcome was before it took any steps to make the correction.

My attention has just been called there to an error over under the description there under sand, it does not state the amount, the seventh line, it does not state the amount less than Commodity Group No. 22, that should be 10¢.

Sheet No. 2 is a statement of the rates on sand and gravel, proposed by carriers to the Georgia Commission in the 1917 proceeding, the rates authorized by the Georgia Commission following the 1917 proceeding, and also the rates for the Class A or trunk lines, in 1925. It will be noted that in the 1917 proceeding the Commission authorized practically the same rates as proposed by the carriers, and provided the same rates for both sand and gravel. It will be noted that the 1925 Order provides much higher rates for gravel, for distances above 50 miles, than was

proposed by the Carriers in 1917, and that the general level of sand rates fixed in the 1925 Order are much higher than the sand and gravel rates proposed by the carriers in the 1917 proceeding. The 1917 rates as shown here have been treated by the increases under General Order No. 28, Ex Parte 74, and the July 1, 1922, reductions (Rec., 979).

[fol. 433] These are single line scales on Sheet No. 2.

Sheet No. 3 is similar to Sheet No. 2, except that Sheet No. 3 incoudes the rates on sand, gravel, crushed stone and slag. It wll be noted that in the 1917 case, the carriers submitted to the Georgia Commission higher rates on crushed stone and slag, than on sand and gravel, whereas the Georgia Commission in 1925 grouped washed gravel, crushed stone and slag, and provided higher rates on all of these commodities, than on sand, unwashed gravel, and the other crude materials, it being the opinion of the Commission that this represents a proper grouping of these materials. Washed gravel, slag and crushed stone come in direct competition with each other and therefore in our opinion should be grouped together. Common sand, unwashed gravel, crude clay, chert, etc., is of a lower grade material, and does not come in direct competition with the washed gravel, slag and crushed stone, and therefore in the opinion of the Georgia Commission these crude materials should be grouped at a lower rating than the others.

Sheet No. 4 is a statement of the rates on sand, gravel, crushed stone and slag, prescribed by the Interstate Commerce Commission, in what is known as the Meridian Case, I. C. C. 60-5 (Rec., 980).

Clay gravel was described as unwashed gravel and I should say that would include sand gravel if it is unwashed. We have just two groups, if it is not gravel, slag, crushed stone or gravel washed, it would go in the other group. Unwashed gravel is given the same treatment as sand.

[fol. 434] The figures shown on this exhibit as the carriers' figures were taken from an exhibit filed by the carriers in I. & S. Docket 2470. Prior to the revision made by the Georgia Commission, there has been practically no uniformity of rates on these materials between points in Georgia, and as for that matter I might say on interstate traffic throughout the Southern Territory, the rates in effect prior to August 1st, having been put in by the carriers at various

times, and in most cases each adjustment being made to take care of some particular need, and so far as Georgia is concerned, the rates were invariably much lower than the old Class P rates provided for in the Commission's classification. I will now refer to my Sheets Nos. 5 and 5½, which illustrate this condition (Rec., 981).

Sheet No. 6 is a statement of rates on sand between various inter- and intrastate points, and is somewhat similar to Sheet No. 5, except that in Sheet No. 6 we have included interstate points.

Sheet No. 7 is a statement of rates on cement gravel, from Steele's Creek, S. C., a point on the Charleston & Western Carolina R. R., to various points that were in effect prior to investigation in 83 I. C. C. 436. These rates were stated in the tariff in cents per cubic yard, and in cents per car, and in reducing them to cents per ton, we have observed 3,000 pounds, as representing a cubic yard, it being our information that this is the average weight for cement gravel, and this at least to an extent is confirmed by the fact that the tariff provides a minimum of 20 yards, and where the rates are stated in cents per car, the minimum is provided as 60,000 pounds. The sheet is self-explanatory, and shows that with but one exception the Georgia rates bring about increases.

[fol. 435] Sheet No. 8 is a statement of rates on gravel, paving or cement, from Jackson, S. C., a point on the Charleston & Western Carolina R. R., to various points, compared with the rates of the Georgia Commission, these rates being of a later date than the rates shown on Sheet 7, but were being appliel by the carriers prior to the investigation in 83 I. C. C. 426.

We understand cement gravel is an unwashed gravel similar to chert and so treated.

Sheet No. 9 is a statement of rates on sand to Chattanooga, Tenn., from various Georgia points, compared with the rates of the Georgia Commission.

Sheet No. 10 is a statement of rates on sand from Saulsbury, Tenn., to various points, compared with the rates of the Georgia Commission. Saulsbury, Tenn., is a point on the Memphis & Charleston Division of the Southern Ry. just north of Memphis.

Sheet No. 11 is a statement of rates on gravel, slag and crushed stone, which apply intrastate in North Carolina, compared with the Georgia scale.

Sheet No. 12 is a statement of rates on gravel, from Wilmington, N. C., to various points, compared with the rates of the Georgia Commission. It will be noted here that — but one or two exceptions the Georgia Scale is much higher than the rates now being applied from Wilmington to the points shown on this sheet, it will also be noted that these interstate rates are lower than intrastate rates applicable in North Carolina.

Sheet No. 13 is a statement of rates on sand from Wilmington, N. C., to various points, and here again I direct attention to the comparison with the Georgia scale and to the fact that they are lower than the North Carolina Scale (Rec., 983).

[fol. 436] Sheet No. 14 is a statement of rates on gravel from Mitylene, Ala., a point located on the Seaboard Air Line near Montgomery, to various points.

Sheet No. 15 is a statement of rates on gravel, from Gravel Siding, Miss., a point on the Memphis Division, of the Southern Railway, to various points.

Sheet No. 16 is a statement of rates on crushed stone between various interstate and interstate points in Southern Territory. In discussing this sheet, I wish to call attention to the fact that in the 1917 case before the Georgia Commission, the carriers submitted higher rates on crushed stone than on sand and gravel, but crushed stone was segregated from sand by the Georgia Commission, notwithstanding the usual custom of the carriers to apply higher rates on crushed stone than on gravel; the Georgia rates in many cases produce very material increases over the present rates. I would like to make a correction on this sheet in the distance from Elberton, Ga., to Jacksonville, Fla., it is now shown as 279 miles; if you will follow the distance down, you will see that that should be 347 miles, and the Georgia rate should be $1.70.

Sheet No. 17 is a statement of rates on slag from Birmingham, Ala. to various points (Rec., 984).

Sheet No. 18 is a statement of roadway material rates applying intrastate in Florida, and I will not make any comment on that because there has been enough said of Florida already.

[fol. 437] Sheet No. 19 is a similar statement showing the rates that are confined to Jacksonville, Tampa and St. Petersburg.

Sheet No. 20 is a comparison of the intrastate rates in Wisconsin with the Georgia Scale.

Sheet No. 21 is a comparison with the rates in Missouri.

Sheet No. 22, Kansas.

Sheet No. 23, Iowa.

24, these rates have already been discussed by a previous witness.

Sheet No. 25 is a statement of the net Railway Operating Income for Class 1 carriers for the 11 months period ending November 30th, which it will be noted shows the carriers in the Southern District earned a return of 6 percent, the greatest net return of any district or region in the United States, except the Pocahontas Region. This earning is in excess of the 5.75, which your Commission has stated was reasonable, and the Georgia Commission is not complaining of the return being earned by the Southern carriers, which of course includes our Georgia carriers, and on the present showing would not advocate any general horizontal reductions in this territory, but we don't think this is the time for general increases in revenues, but we do think that now is the most opportune time we have had (Rec., 985) to make needed revisions, such as has been accomplished by the Georgia Commission. As I stated in the beginning of my testimony, the Georgia Commission feels its responsibility to the carriers in Georgia, and in making the revisions, which have already been accomplished, the Commission has endeavored to prescribe rates that would be reasonable throughout the territory, [fol. 438] regardless of the effect on the Georgia interstate situation, and I believe this effort is reflected in Sheet No. 26, which is a statement of operating revenues for the Trunk Lines in Georgia for the six months period ending November 30th, showing the relationship of the Georgia earnings to the system earnings of these lines. It will be noted that 14.6 percent of the mileage of the Atlantic Coast Line Railroad is located in Georgia, and Georgia provided during this period 19 percent of Coast Line's gross revenues, and 19 percent of its net revenues, and 22 percent of the increased net revenues 1925 over 1924. It will be noted that mile for mile Georgia provided

more than its proportionate share of both gross and net revenues; the same comparisons are made with the other lines, and with the same results with the exception of the Louisville & Nashville Railroad. I have selected this period of 6 months, for the reason that it reflects the earnings under the rates prescribed by the Georgia Commission on sand, gravel, etc., both as to the reductions prior to August 1st, 1925 and the increases effective on August 1st, 1925 (Rec., 986).

Sheet No. 27 is a statement of operating revenues, for the same period of six months ending November 30th, but shows only the Georgia proportion, and shows the percentage of increase in net earnings on Georgia Traffic 1925 over 1924. One of the most significant things about this [fol. 439] case is that the Atlantic Coast Line is the only Trunk Line a party to this complaint against the Georgia rates, and only a few of what is known as the Short Lines; while this sheet includes all of the Trunk Lines it only includes the short lines that are a party to the complaint. It will be noted that the net operating revenues of the Atlantic Coast Line on Georgia Traffic in 1925 shows an increase of 122.7 percent over 1924. The Seaboard Air Line shows an increase of 105.7 percent. The M. D. & S. Railroad, which is among the short lines, shows an increase of 56.7 percent.

Sheet No. 28 is a statement of gross operating revenues for the six months ending November 30th of the same lines shown on Sheet No. 27. It will be noted here that the Atlantic Coast Line has an increase in gross operating revenues on Georgia Traffic of 42.9 percent. These exhibits in my opinion indicate that Georgia is either operating under a generally higher level of rates than the balance of the territory served by these carriers or that Georgia is providing for these carriers a higher density of traffic than other territory served; certainly these exhibits do not (Rec., 987) indicate that the rates fixed by the Georgia Commission are unreasonably low.

Now, Mr. Commissioner, with regard to the charge that the Georgia rates discriminate against interstate commerce, [fol. 440] we do not deny that there are some rates applying interstate into Georgia that are higher than the Georgia scale, and this is illustrated by my exhibit, but it must be remembered that prior to the effective date

of the Georgia rates there were a great many interstate rates into Georgia much lower than the Georgia rates, which would have created violent discriminations against Georgia, if they had not been brought up to the level of the Georgia rates, and further that the carriers in making their interstate revision only revised such rates as were lower than the Georgia scale, and so far as we know made no revision of their rates that happened to be higher than the Georgia Scale.

The Georgia scale represents as near as practicable a general level of what might be considered as the going rates on these materials in the Southern Territory, and as applied to Georgia traffic represent material increases in carriers' revenues, and in our opinion if applied inter and intrastate throughout the Southern Territory, would cause increases in revenues (Rec., 988).

That closes what we have to say in 17517, which we would like to have considered in the other cases, and I would like to make a statement, I don't know whether I am in order here as to argument or not, but in regard to the complaints that have been brought by the Alabama Commission and the other Alabama interests, against the Georgia rates, we would like to show on the record that the Ala- [fol. 441] bama rates are not under consideration and would not be affected by the outcome of this case, and any order issued by your Commission disturbing the Georgia rates would freeze the Georgia rates and would increase the rates from Georgia Territory into Alabama, where it has been shown there is a very considerable movement, with no relief in Alabama, the Alabama Commission could then fix their rates at will, and hold them in effect, and the carriers themselves could not relieve that situation. We wanted to ask that the present rates from Georgia into Alabama be not disturbed under the present conditions.

That closes my testimony.

Cross-examination.

By Mr. Gwathmey:

The apportionment of the carriers' revenue shows on my Sheet 26 Georgia is based upon the carriers' reports to the Georgia Public Service Commission. I cannot state

the basis for the apportionment because the reports are filled out on a form that is uniform and sworn to by the comptrollers and auditors of the various lines (Rec., 989).

I am unable to state whether such reports purport to be confined to traffic originating in Georgia or whether they include revenues from traffic passing through Georgia which on some basis is apportioned in part to Georgia business. Statements have been made by accounting officers [fol. 442] of the Georgia lines at a recent meeting that the present State proportion earnings do not include any overhead traffic and these statements were made because a Southern states Commissions have under consideration the adoption of a uniform system of accounts for carriers (Rec., 990).

If you have in mind, Mr. Gwathmey, a movement from Columbia, S. C., to Jacksonville through Savannah, that would be Georgia overhead traffic. I do not understand that any part of that revenue would be shown in reports to the Georgia Commission. But my thought is, considering the present rate of return shown by the carriers in the Southern region as to the pripriety of authorizing rates which would involve an increase in the revenue of the carriers as a whole on any particular class of commodity, it depends on what we might have under consideration. If you have reference to the general revisions that the Georgia Commission is making, I might be able to answer you; if you have reference to some specific movement, my answer might be otherwise. If you understood my statement to mean that in view of the rate of return shown by the figures submitted by me on the movement of sand and gravel, there should be no rates authorized on this traffic that would carry with them an increase in revenue in the aggregate (Rec., 991), then you did misunderstand. I did not make that statement.

I said the carriers were now earning in excess of 5 3/4ths percent that the I. C. C. say they are entitled to, but under [fol. 443] that showing the Georgia Commission would not advocate any horizontal reductions in the carriers' revenue. I said I did think that under the present showing it is an opportune time to make needed revisions on commodities such as those now being considered (Rec., 992).

I have no personal knowledge that gravel moves from Wilmington, N. C., but I do know that the rates shown in

this exhibit have been brought forward in a very recent issue of Mr. Cotterill's tariff.

Mr. Cotterill: I have no questions, but I would like the privelege of indicating that as to the matter of freezing the Georgia rates or changing the interstate rates from Alabama into Georgia without appropriate revision within Georgia, I am quite confident that I would be authorized if the opportunity to present the question were here presented to me, to say that the Alabama Commission would very gladly conform itself to the conclusions of the Interstate Commerce Commission in these cases, and that it would under any circumstances conform itself to the suggestion of Mr. Price that any revisions growing out of this case be contemporaneous as to state and interstate traffic. I will go further and say that between (Rec., 993) now and the time of the argument I would consider that under the circumstances it would be appropriate for me to make inquiry of the Alabama Commission as to whether I have correctly stated its point of view, and whether I have or not I shall at the time of the argument make a formal statement covering that subject.

[fol. 444] Mr. Gwathmey: If any statement of that sort is made for the record, I assume that it will be understood that it is made officially on behalf of the Alabama Public Service Commission.

Mr. Cotterill: Yes, it will be at that time; I was only attempting now to indicate my own judgment based upon the points of view of that Commission which have here been expressed, as well as individual conversations such as their point of view, and also I am quite certain that I would not hesitate to state them now officially if an opportunity presented itself simply to consult them, but in any event I will promise that some such statement will be made officially and formally at the time of the argument.

Mr. Burchmore: I call attention to the fact that Mr. Aldredge had that opportunity and would not avail himself of it on cross examination.

Mr. Cotterill: Mr. Aldridge is the chief examiner of the Alabama Commission; he was not representing them as such, he was a witness in the case, and would not assume authority on (Rec., 994) a matter of that character to speak of his Commission, but in my capacity as counsel, I

don't doubt that they will authorize him to make some such statement.

[fol. 445] (Rec., 1692)

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 17517

Rates on Chert, Clay, Sand, and Gravel Within the State of Georgia

Docket No. 17763

ROQUEMORE GRAVEL COMPANY et al., Complainants,

vs.

ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY et al., Defendants

Before E. H. Waters, Examiner

Atlanta, Ga., November 26, 1928.—10:00 o'clock a. m.

Met pursuant to notice.

[fol. 446] Proceedings

Exam. Waters: Gentlemen, come to order.

The Commission has set for further hearing at this time and place, docket No. 17517, Rates on Chert, Clay, Sand and Gravel within the State of Georgia; and

Docket No. 17763, Roquemore Gravel Company et al. versus Atlanta, Birmingham & Atlantic Railway Company et al.

We will now take the appearances orally, and carriers may announce theirs first.

APPEARANCES OF COUNSEL

Mr. Gwathmey: Frank W. Gwathmey, appearing for the Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, Atlanta & West Point Railroad Company, Western Railway of Alabama, Georgia Railroad and Nashville, Chattanooga & St. Louis Railway.

Mr. Walker: L. V. Crane and H. L. Walker, for the Southern Railway System Lines.

Mr. Morris: E. D. Mohr and Ben F. Morris, for the Louisville & Nashville Railroad Company.

Exam. Waters: Is Mr. Mohr present?

Mr. Morris: Mr. Mohr is not present.

Mr. Streyer: John A. Streyer, for the American Short Line Railroad Association.

Exam. Waters: Is that all for the carriers?

Exam. Waters: We will now have the shippers' representatives (Rec., 1699).

[fol. 447]. Mr. Cotterill: Charles E. Cotterill and M. M. Caskie, of Montgomery, Ala., for the complainants.

Mr. Ribe: A. J. Ribe, for the Birmingham Slag Company, Birmingham, Ala., and The Montgomery Gravel Company, Montgomery, Ala.

Mr. Angle: H. S. Angle, for the Dixie Sand & Gravel Company.

Mr. Linthicum: Slaughter Linthicum and R. H. Cobb, for the Piedmont Corporation.

Mr. Webster: L. E. Thorpe, Consolidated Quarries, Inc., of Lithonia, Ga., Willis Galloway, Georgia Limerock Company, Perry, and J. Prince Webster, attorney for both companies.

Mr. Brooker: Edwin Brooker, for the Atlanta Sand & Supply Company, and the Allen Sand Company.

Mr. Graves: G. B. Graves, of Warrenton, Ga., appearing in his own behalf.

Mr. Moore: M. C. Moore, for the Mississippi Railroad Commission. We are not directly interested, but I will enter an appearance for them.

Mr. Youmans: H. T. Youmans, for the Ellenton Gravel Company, Ellenton, S. C.

Exam. Waters: If that is all the appearances for the shippers, we will have the other appearances (Rec., 1700).

[fol. 448] Mr. Watkins: Mr. Examiner, you mean the shippers on the side of the complainants?

Exam. Waters: Yes sir.

Mr. Watkins: I represent shippers who are on the defensive side.

Exam. Waters: We will have the other appearances in the order that you announce them.

Mr. Watkins: Edgar Watkins and Edgar Watkins, Jr., Harry T. Moore, and E. H. Hart, for the Georgia State Highway Commission, Fulton and DeKalb Counties, Ga., City of Atlanta, Ga., Atlanta Freight Bureau, Morac Sand Company of Junction City, Brown Brothers of Junction City, and other Georgia Sand and Gravel Dealers whose names appear on the appearance blank. The Georgia Granite Quarries Company, of Lithonia, Ga.; Mr. Albert E. Mayer also represents these Georgia sand and gravel companies, and will be here a little later.

Mr. Burchmore: For the Georgia Public Service Commission, Mr. S. J. Smith, Jr., special attorney for the Commission, E. M. Price, rate expert, and John S. Burchmore, as special counsel.

Exam. Waters: Does that conclude the appearances?

STATEMENT BY EXAMINER WATERS

Exam. Waters: I will make a brief statement of the issues. (Rec., 1701.)

[fol. 449] Upon petition of carriers respondent in No. 17517, Rates on Chert, Clay, Sand and Gravel within the State of Georgia, the Commission on the 4th day of June, 1928, reopened the said proceeding for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Commission to be maintained by said respondent carriers on intrastate shipments of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in relation to the interstate rates and minimum weights prescribed in its report and order on January 21, 1927, in said No. 17517, causes or will cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

The Commission at the same time reopened its No. 17763, Roquemore Gravel Company, et al. versus Atlanta, Birmingham & Atlantic Railway Company, et al., solely on the issue as to whether the intrastate rates and minimum

weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, in shipping sand, gravel (Rec., 1702) (washed or unwashed) and clay [fol. 450] gravel from Montgomery, Ala. and Chattanooga, Tenn. to destinations in the state of Georgia.

COLLOQUOY

Mr. Burchmore: Mr. Examiner, on behalf of the Georgia Public Service Commission, I desire to present a point that as the issues are defined in your opening statement there is no jurisdiction in the Interstate Commerce Commission to enter an order in this proceeding which would have the effect or intended effect of making any change in the intrastate rates for the transportation of chert, clay, sand, gravel and other materials within the state of Georgia. That question is jurisdictional and goes to the authority of the Interstate Commerce Commission under the terms of the interstate commerce act.

I have a second point to urge, that the Georgia Public Service Commission objects to the use in the determination of the issues now presented by these proceedings of the testimony taken at the sessions of February 15, 16, 17, 18, 19 and 20, 1926, in docket No. 17517 and related cases, and the exhibits at that time offered, on three grounds:

First, that the issues now presented to the Commission (Rec., 1703) as defined by the order, and as defined by the complaint, and as defined by your opening statement, are not the same issues that were presented at that time, in those proceedings.

Second, that the testimony then given throws no real light on the conditions now obtaining and which will obtain [fol. 451] for the future, the question before the Commission having to do only with rates for the future and not for the past; that conditions have materially changed since February, 1926, a period of nearly three years, and that much of the matter then in evidence was immaterial to any issue now before the Commission, and much of it would be

changed if now given, by reason of the changes in conditions.

I desire to make that objection and ask that that record shall not be considered.

Mr. Watkins: Mr. Examiner, on behalf of the shippers for whom I have entered an appearance, I wish to make the objection that under the pleadings in this case the Commission has no jurisdiction whatsoever of the 13th section case, and that the petition in that case cannot be filed as a supplemental petition because it is based on facts arising after the hearing of the original case, and for the other reasons specifically set forth in my answer heretofore filed in this case.

Mr. Cotterill: I take it, gentlemen, that none of the (Rec., 1704) objections you have now stated is of a kind that you wish the Examiner to rule upon.

Mr. Watkins: I do not know that he should rule upon it, but——

Mr. Burchmore: I think the Examiner should rule as to [fol. 452] my objection to that evidence. I think that as to the jurisdictional question, we would have to have a ruling by the Commission. I think on my objection to the evidence he should rule, but it is possible that he has received instructions from the Commission.

Exam. Waters: Rule on what, Mr. Burchmore?

Mr. Burchmore: On the use of the former record.

Exam. Waters: You are objecting to that as I understand it?

Mr. Burchmore: Yes, sir, we must know whether that record is to be used.

Mr. Gwathmey: Before the Examiner announces his ruling I would like to say that the carriers have assumed and still assume that the original record in this same proceeding will continue to be a part of the record in the case. We have not come here prepared to proceed on any other assumption, and in that connection I would call attention to the fact that the order reopening the case expressly states that it is reopened for further ruling.

Mr. Cotterill: Mr. Examiner, to what Mr. Gwathmey has (Rec., 1705) said I respectfully add only a few words. An objection of the kind indicated conceivably might have some merit if we were here trying a new case, but all of the for-

mal orders and the formal steps by which we have reached [fol. 453] the present point conclusively establish that what we are doing is to proceed in a case that is not yet completed; consequently the suggestion that a part of the record in the case on trial is to be excluded is the same as to say that you may stop in the middle of a case, and reject half of it, and try it over again, without any new proceeding being inaugurated. I think under the conditions it must be clearly apparent that there can be no objection to a continuation in this record of a proper record already made in a case not yet disposed of.

I further say that if there be any changed circumstances pertaining to the issues now under inquiry, any party would have opportunity to submit such additional evidence as would in these respects correct the record, and they would lose no substantial rights.

Mr. Watkins: In my statement of objections, I made no reference to the use of the record, because I did not think that question had arisen. Inasmuch as counsel have now stated that they expect that record to become a part of this, I wish to register an objection to a consideration of that record here as part of this record, or as in the evidence (Rec., 1706) offered in this record.

Exam. Waters: Gentlemen, as far as my ruling is concerned my mind is pretty well make up. The record is open for the consideration of the matter involved in these proceedings, and I rule that it be considered so opened, and [fol. 454] for whatever use the parties may wish to make of it.

Mr. Burchmore: I would like to note an exception.

Mr. Cotterill: Mr. Watkins, I assume that as to the point you make with respect to the pleadings in the case, it is not a point as to which you seek a ruling at this time?

Mr. Watkins: I make the point, but I do not assume that the Examiner would determine it at this time.

Mr. Cotterill: I asked the question because none of the counsel in their statements have directed themselves to that.

Mr. Watkins: We do object at any time when it may be opened to be considered, to any record heretofore made, the clients of mine not having been in the former case, and this being to them entirely new.

Exam. Waters: Whom did you represent in the former case?

Mr. Watkins: The Atlanta Freight Bureau, in an indirect way.

Exam. Waters: You represent them now?

Mr. Watkins: Yes sir.

Exam. Waters: You proposed a scale, didn't you? (Rec., 1707.)

Mr. Watkins: Yes sir, some of my clients I did represent at that time, and some of them were not in that case at that time.

Mr. Burchmore: Mr. Examiner, I will ask your indul- [fol. 455] gence to make this personal statement on the record, that in the former hearing in this case, in 1926, I entered an appearance, and then represented the Tri-State Road Material Association composed of producers in the Mississippi Valley. I do not represent them in these proceedings. I understand they have no interest whatever in the subject matter of these proceedings, and are not appearing in them. My sole appearance and representation here is as counsel for the Georgia Public Service Commission, for whom I did not appear, and had no contact with them at the previous sessions. I make that statement so as to avoid any confusion over my former appearance.

Exam. Waters: All right, gentlemen, let us get going.

Mr. Gwathmey: Strictly speaking, Mr. Examiner, I would assume that inasmuch as there is a formal complaint case to be heard, that the complainants would have the right, if they chose to insist upon it, to proceed first. However, I understand that Mr. Cotterill, who is counsel for those complainants, that he considers it desirable that the carriers should present certain exhibits showing the rate situation, and it is agreeable to me to proceed now with (Rec., 1708) all of the carrier witnesses, or to proceed with some of them, and stand aside for the complainants if they wish to be heard before we get through.

[fol. 456] R. J. Doss was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am general freight agent of the Atlantic Coast Line with headquarters at Wilmington, N. C., and was a witness for the Company at former hearings in these proceedings.

(Thereupon it was stipulated between counsel that the qualifications of all witnesses who testified at prior hearings covering the subject matter upon which they shall testify, shall be conceded, unless directly questioned.) (Rec., 1709.)

In my direct testimony in these cases given at the hearing held in Atlanta, February 15-20, 1926, I outlined in detail the history of the rates on sand, gravel, crushed stone, and so forth, between points in Georgia, as well as the interstate rates of the Atlantic Coast Line Railroad, and in connection therewith fully described the circumstances under which the Atlantic Coast Line and certain other Georgia carriers filed with the Interstate Commerce (Rec., 1710) Commission petition dated June 5, 1925, which resulted in the institution of the proceeding known as docket 17517.

It seems unnecessary to repeat that testimony at this time, especially so since the report of the Interstate Commerce Commission in docket 17517, 122 I. C. C. 133-176, covers the situation so fully in its relation to the Georgia intrastate rates.

[fol. 457] The previous handling of the matter is also outlined in chronological order in the supplemental petition filed on behalf of respondent carriers operating in the state of Georgia with the Commission April 12, 1928.

The rates prescribed by the Interstate Commerce Commission in its order in docket 17517 dated January 21, 1927, were published in Agent Glenn's tariff I. C. C. A-606, effective August 1, 1927. The current tariff is I. C. C. A-655.

The rates prescribed to and from the Florida peninsula in the order of March 5, 1928, were published in Agent Glenn's tariff *O*. C. C. A-668, effective August 2, 1928, which is the current tariff.

Attention is here called to the reference at page 169, 122 Interstate Commerce Reports, to the Georgia situation, the

Interstate Commerce Commission having expressed the view that the Georgia Commission would co-operate in authorizing such revisions as may be necessary to bring the Georgia rates into harmony with the interstate adjustment therein (Rec., 1711) approved.

Following the issuance of the Interstate Commerce Commission's report and order dated January 21, 1927, and not having advice that the Georgia Public Service Commission expected to take any further action in the matter, the Georgia carriers, by petition dated May 23, 1927, requested the [fol. 458] Georgia Commission to approve intrastate in Georgia the same mileage scales as were fixed by the Interstate Commerce Commission in its order dated January 21, 1927, in docket 17517. The hearing on this petition was held by the Georgia Public Service Commission in its offices in Atlanta on July 25, 1927.

Under date of March 13, 1928, the Georgia Commission made and promulgated an order directing the establishment on and after May 1, 1928, of a revised scale of rates for intrastate application within the state of Georgia. A copy of said order is embodied in the carriers' supplemental petition of April 12, 1928, being marked exhibit A thereof.

The Georgia intrastate rates then established and now published in Agent Glenn's Georgia local and joint mileage tariff, I. C. C. A-529, are those about which the carriers are now complaining (Rec., 1712).

I am familiar with the contents of the petition filed April 12, 1928 on behalf of the carriers and matters of fact therein stated are true with one slight exception. On page 6, in paragraph 4, it is stated that the petitioners state that rates arrived at upon basis of the distance scales prescribed and ordered in the said orders of this Commission dated January 21, 1927, and March 5, 1928, respectively, have been made effective by all carriers respondents herein for interstate [fol. 459] application over their respective lines, and so forth.

At the time this petition was filed on April 12, 1928, the Commission's order dated March 5, 1928 has not been complied with. It covered the rates to and from the Florida peninsula, which as I have just stated, were published effective August 2, 1928.

Mr. Gwathmey: If the Examiner please, I will ask at this time that the petition dated April 12, 1928, be considered as a part of the record in the case.

Mr. Watkins: We object to that if it is to be considered as evidence. Of course, it is pleadings, and the pleadings are a part of the record, but as evidence we object to its consideration (Rec., 1713).

Exam. Waters: What do you offer it for?

Mr. Gwathmey: I have had the witness verify the accuracy of the facts set forth in that petition, and I offer it for the purpose of establishing those facts.

Exam. Waters: It may be received.

Mr. Burchmore: May we understand that being so received, the order of the Georgia Public Service Commission of March 13, 1928, set forth therein as exhibit A, is considered in evidence?

Exam. Waters: The whole thing has gone in.

[fol. 460] Mr. Gwathmey: The petition as a whole is in evidence. The purpose of offering it is largely one of convenience and to avoid going over a historical narrative of these different occurrences. A further purpose is to put in the record in this manner a true copy of the order of the Georgia Commission about which we are here complaining. It is in convenient form, and I think will serve a very good purpose in that way.

My exhibit No. 98-B is a statement showing single and joint line rates on sand, gravel, chert, and so forth (Rec., 1714), prescribed by the Georgia Public Service Commission in docket 15416 and 15997, becoming effective intrastate in Georgia April 1, 1925; those prescribed by the Interstate Commerce Commission in docket 17517; and those prescribed by the Georgia Public Service Commission, March 13, 1928, file 16384, to become effective intrastate in Georgia May 1, 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 98-B, Witness Doss.")

I now offer as my exhibit No. 99-B, a statement showing Trunk Line scales prescribed by the Interstate Commerce Commission in docket No. 17517, and by the Georgia Public Service Commission in its order of March 13, 1928, on sand, gravel, crushed stone, slag, and other roadway building materials.

By "Trunk Line" I mean the scale of rates applicable be-
[fol. 461] tween points and involving hauls only over the so called standard or trunk lines. The single and joint line scales in the two orders mentioned are shown in parralel columns, with a third column headed "Differences" under which are shown the differences between the two scales.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 99-B, Witness Doss.") (Rec., 1715.)

It will be observed that as to the single line scale prescribed by the Georgia Public Service Commission, it is in some cases the same as the Docket 17517 scales, while for other distances, principally under 200 miles, the Georgia Public Service Commission scale is lower by amounts of five cents and 10 cents per ton than the docket 17517 scales, while for distances 200 miles and over there are some instances where the Georgia Public Service Commission scale is in amounts five and 10 cents per ton higher than the docket 17517 scale.

As to the joint line scales, it will be noted that the Georgia Public Service Commission scale for all distances 220 miles and under is lower by amounts ranging from five cents to 25 cents per ton than the joint line scale prescribed in docket 17517.

For distances over 320 miles there are some instances where the scales are the same, and others where the Georgia Commission's scale is five or 10 cents lower than the Interstate Commission's scale, and for 400 miles and over. 360 miles the Georgia Public Service Commission [fol. 462] scale is five cents higher than the interstate scale (Rec., 1716).

Exhibit 99-B relates exclusively to Trunk Lines. Under the Interstate Commerce Commission's order in docket 17517, the so-called short or weak lines were permitted to add an arbitrary of 25 cents per ton, as we understand the order, and as it has been applied. These short or weak lines determined for themselves whether or not they would add it. In some cases they added it, in other cases they did not add anything, and in others they added some split between 25 cents and nothing. Under the Georgia Commission's order I understand the short lines are permitted to charge 10 cents per ton higher than the Trunk Lines.

The basis permitted by the I. C. C. for the short or weak lines is higher than that permitted by the Georgia Commission for both single and joint line hauls over short line railroads (Rec., 1717). In the case of joint hauls between Trunk Lines and short lines, the Georgia Commissions' basis is lower in all cases.

My Exhibit, No. 100-B, 48 Sheets, shows the rates on these commodities to 46 Georgia points widely scattered throughout the State and fairly represents the whole situation.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 100-B, Witness Doss.")

[fol. 463] To each destination are shown the rates from representative interstate shipping points, and thereunder rates from representative Georgia shipping points for comparable distances.

The statements show the distances, the present rates, the rates yielded by the docket 17517 scales and the amounts by which the interstate rates exceed the intrastate rates under the docket 17517 rates and under the present Georgia intrastate rates.

In illustration, the second sheet of the exhibit shows (Rec., 1718) rates to Millen, Ga. In the first group, the rates from Beverly, Hellams and Pacolet, S. C., are contrasted with rates from Lithonia, Elberton and Junction City, Ga. The present rates are from the three South Carolina origins 145 cents, and from the three Georgia origins 130 cents. The 145 cent rate from the South Carolina origins is on basis of the docket 17517 scales.

If the rates from the Georgia origins were made on the interstate basis, they would be, from Lithonia, 140 cents; from Elberton, 160 cents, and from Junction City, 135 cents.

The 160 cent rate from Elberton is on basis of adding the short or weak line arbitrary of 25 cents per ton.

If the rate be made on basis of the Trunk Line mileage, it would be higher than 160 cents.

[fol. 464] If the short lines participating in this haul forego their 25 cents per ton arbitrary the rate from Elberton would be 135 cents instead of 160 cents.

In the columns headed "Spread under Docket 17517 rates" and "Spread under the Georgia Commission's

order," it will be observed that at the present the rates from the Georgia origins are 15 cents per ton lower than from the South Carolina origins, but if the Georgia rates be made on the interstate basis the spread will be reduced to five cents from Lithonia and to 10 cents from Junction City (Rec., 1719).

From Elberton, if the short or weak line arbitrary of 25 cents per ton is added the rate instead of being 15 cents per ton less than the South Carolina points as of today, will become 10 cents per ton higher than from the South Carolina points, but if the short or weak lines forego their arbitrary the rate from Elberton will become 135 cents, which reduces the present spead of 15 cents to 10 cents.

In the next group are compared the rates from Bennettsville, Hoovers, Slawco, and Dillon, S. C., with the rates from Fort Gaines, Georgetown and Helmer, Ga.

At present, Fort Gaines and Georgetown have a 10 cent and Helmer a 20 cent per ton advantage over the South Carolina origins. If the rates from the Georgia origins be made on the interstate basis, Fort Gaines and Georgetown will then have the same rates as the South Carolina origins [fol. 465] while the 20 cent spread enjoyed by Helmer will be reduced to 10 cents.

Taking Albany, Ga., page 13, it will be noted that today Chehaw, Ala., distance of 145 miles, has a rate five cents per ton higher than Norris, a distance of 179 miles. In both cases joint hauls are involved, and if the rate from Norris be made on basis observed from Chehaw it will, instead of being five cents lower, be 10 cents higher. Chehaw, therefore, is suffering a disadvantage of 15 cents (Rec., 1720) per ton.

To Bainbridge, Ga., page 39, the present rate from Birmingham, Ala., distance of 272 miles, is 170 cents, while from Lithonia, Ga., distance of 276 miles, the present rate is 180 cents, or a difference in favor of Lithonia of 10 cents, whereas the distances being substantially the same the rates if made upon the interstate basis will be identical.

To Waycross, Ga., page 45, Montgomery, Ala., a distance of 261 miles, has a rate of 165 cents, while Norris, Ga., a distance of 245 miles, has a rate of 150 cents or an advantage of 15 cents per ton.

If the rate from Norris be made on the same scale as Montgomery, it will be 160 cents, or a difference of only five cents per ton.

[fol. 466] My Exhibit No. 101-B is a map issued by the State Highway Department of Georgia showing the system of State Roads.

(The same was thereupon received in evidence, marked "Carrier's Exhibit No. 101-B, Witness Doss".) (Rec., 1721.)

On this map I have circuled in red crayon a number of the points which are shown as destinations in my exhibit 100-B. I am merely filing this map for the purpose of showing that the destinations selected are well scattered over the state, and should be fairly representative of the situation.

My exhibit 102-B is a statement showing distances and rates on crushed stone, carload, to representative Georgia points, from Columbia, S. C., Holton, Ga., Lithonia, Ga., and Clairmont, Ga.

(The same was thereupon received in evideence, marked "Carriers' Exhibit No. 102-B, Witness Doss.")

From the Georgia origins, the rates yielded by the interstate scales prescribed in docket 17517 are also shown.

The destination on the exhibit shows Swansboro. That should be Swainsboro.

The figures on this exhibit include 10 cents per ton where the haul intrastate in Georgia is over short or weak lines, in connection with the rates from the Georgia origins, while the rates from Columbia and those shown opposite to 17517 scale from the Georgia origins include the short or weak line arbitrary of 25 cents per ton (Rec., 1722).

The Atlantic Coast Line handles a very large tonnage of sand, gravel, crushed stone and related articles.

In the first hearing of I. C. C. docket 17517 I testified to this effect, and called attention to the fact that for the year 1924 the Coast Line handled more than 3,750,000 tons, which [fol. 467] represented 18.1 per cent of the total tonnage handled, and for the ten months ending October 1, 1925,

the Coast Line handled 4,452,519 tons which represented 22 per cent of the total tonnage handled during that period.

I find that for the first eight months of 1928, the Coast Line handled 2,572,417 tons of these commodities, which represents 18.6 per cent of the total tonnage.

During the same period of 1927 the Coast Line handled 3,517,513 tons, representing 22.7 per cent of the total tonnage handled.

Our revenue on the tonnage handled for the first eight months of 1928 approximated $2,100,000 and for the first eight months of 1927 $3,220,000. Our revenue on these commodities represented approximately 6.5 per cent of our total freight revenues (Rec., 1723).

Yes, the figures I have given all relate to the entire tonnage and revenue of the Atlantic Coast Line on these commodities and include intrastate and interstate in Georgia, Florida, and Carolinas.

By Mr. Gwathmey:

Q. Mr. Doss, is uniformity in the mileage scales applicable on these commodities between points in the socalled Southern territory, exclusive of the Florida peninsula (Rec., 1724), and intrastate between points in the states other than Florida served by the Atlantic Coast Line, a necessary and desirable thing, in your opinion?

Mr. Burchmore: I object to that on the ground that it is not a proper question for this witness, or a question on which this witness is qualified to express a competent opinion. I concede that he is thoroughly informed as to traffic matters, and thoroughly conversant with rates and [fol. 468] traffic matters of the Atlantic Coast Line and corresponding carriers throughout the Southern region, when I make that objection.

My objection is intended to go to the substance of that question which is, "Is uniformity in mileage scales necessary and desirable?"

Exam. Waters: You may give your opinion on it for what it is worth.

Mr. Burchmore: I will note an exception.

The Witness: In my opinion, the transportation and other conditions on the lines of the Atlantic Coast Line other than in the peninsula of Florida are such that vary-

ing levels of rates on these commodities are not justified and cannot be operated without causing discrimination and trouble.

From one end of our railroad to the other end, we find on these commodities that the intrastate producers are competing with the interstate producers. For example, North Carolina stone moves into Virginia in competition with Virginia producers; Virginia stone and gravel moves into North Carolina in competition with North Carolina producers; North Carolina stone, gravel and sand moves into South Carolina in competition with South Carolina producers; the South Carolina products compete with similar products from North Carolina and Georgia, and to some extent with Alabama, Tennessee and Virginia; the Georgia producers compete with Alabama, Tennessee, South Carolina, North Carolina and Florida, and so on.

There cannot very well be a departure from the uniform basis either interstate or intrastate, from and to any of the points in this territory without causing trouble. The situation is correctly stated in the Interstate Commerce [fol. 469] Commission's report in docket 17517, 122 Interstate Commerce Reports, at page 148, in the following language:

"While we shall not prescribe minimum rates, we shall prescribe a scale which takes fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic."

The arrangement we have for collecting the data dealings specifically with the matter of revenue that is involved in connection with the application of the Georgia prescribed scale, contemplated its preparation on a forwarded basis, that is, that the originating line would prepare the information. Since there is no production of crushed stone, slag or chert, and only a small production of gravel and slag at points on the A. C. L. I will not deal with that situation. The A. C. L. is a large and im-

portant delivering line but not an originating line in Georgia (Rec., 1727).

By Exam. Waters:

The docket 17517 scales have been made applicable intrastate in North Carolina and intrastate in Alabama. They have been made effective interstate throughout the territory on and east of the Louisville & Nashville Railroad all the way to the Virginia Cities with some slight exceptions. What I have said does not refer to short or weak lines, because as I have previously said, in some cases [fol. 470] they took the arbitrary, and in other cases they did not.

I understand that in Tennessee and in Kentucky the rates have been made applicable with the exception that in the socalled Mississippi Valley part of Tennessee and Kentucky, probably that has not been done.

I understand that the tariffs carrying the interstate rates in the Valley, in the Mississippi Valley are now being compiled, and within a very short while the docket 17517 scales will be made applicable in that territory.

I am not fully informed about the intrastate situations in Mississippi and Louisiana (Rec., 1729).

The scale has been voluntarily extended by the carriers beyond the scope of the general orders so as to cover all interstate business in the Southeast.

(Witness excused.)

J. H. WHIGGAM was thereupon called as a witness and, being *being* first duly sworn, testified as follows:

Direct examination.

By Mr. Cotterill:

I am employed by the Roquemore Gravel Company of Montgomery, Alabama, one of the joint complainants in this case, which has acquired substantial interests in the Mobile Sand and Gravel Company since the last hearing in this case. Except for differences in the scale of operations, the situations of the two companies respecting the

matters here involved are sufficiently alike, so that my testimony is equally applicable to both (Rec., 1730).

Both these companies are located on the Montgomery District on the L. & N., the Western Alabama, The Central of Georgia, and the M. & O., and the capital of these [fol. 471] two companies is $2,000,000. Until lately the actual production has been approximately 3,000,000 tons annually. There have been recent additions to the companies' facilities looking to an enlargement of their operations to a point of approximately 5,000,000 tons per year, which means an increase on an assumed loading of 50 tons per car, from 60,000 cars to 100,000 cars, and the existing production runs in the neighborhood of 60,000 to 65,000 carloads (Rec., 1731).

The companies' shipments are into Georgia, Florida, Alabama and parts of Tennessee, Mississippi and South Carolina. The distribution of tonnage between those destinations varies. On of the contributing factors that cause such variations is the varying amount of bond issues for highway work at different times. The division of use of gravel and sand produced by my companies is about fifty per cent between highway and other types of building (Rec,. 1732).

And seasonal conditions also is a factor in the variation of the demand. In Florida it fluctuates considerably. The state of the money market is another factor, as is also the state of general business (Rec., 1733).

The demand in Alabama for our commodities does have an effect upon our sales in markets outside of Alabama (Rec., 1734). I think fifty per cent is a fair approximation of the normal consumption of our products in Alabama, allowing for the variations in demand that I have mentioned as occurring from time to time and I think 25 per cent or 50 per cent of the remaining half might represent the normal distribution into Georgia, while the remainder will go to Florida and portions of Mississippi, [fol. 472] Tennessee and South Carolina (Rec., 1735).

The maintenance of full operating capacity necessarily affects operating and distribution expense. Georgia affords our companies a large market for its products after we meet the demand in Alabama, and is of increasing importance so that we maintain separate auxiliary organizations within Georgia, as for example, sales offices in At-

lanta and Albany (Rec., 1736), which keep in close touch with the work in the entire state of Georgia at a cost of about $20,000 a year. We receive daily reports and much information as to possible sales. There are large quantities, of stone, sand and some gravel in Georgia that compete with our sand and gravel. The principal shipping points for stone are Tate, Lithonia, Stockbridge and Ladds, and for sand and gravel Macon, Columbus, Sappho, Williams, Howard, Junction City, Rollo, Gailliard, Lumber City, and Douglas (Rec., 1737). The producing points are scattered all over the state. The rock producing regions are more localized to the north Georgia producing points I named (Rec., 1738).

About 30% or 35 per cent of a given expenditure for a highway is represented by the delivered cost of the material.

Q. Now if the delivered cost of the aggregate be taken as ordinarily amounting to something like 30 to 35 per cent of the complete construction cost, what in very general terms is the percentage which the transportation charges bear to that 35 per cent?

Mr. Burchmore: I object to that question on the ground that this witness is certainly not competent to deal with that question in any such large general fashion as the question implies, the transportation charges—the transportation cost depending, we may assume, for the purposes of this objection, on where this material is transported from and what rate it pays.

[fol. 473] Mr. Cotterill: That is all assumed, and I think the witness understands those assumptions.

Mr. Burchmore: The question calls for his conclusion (Rec., 1741) as to what the average is throughout the territory.

Mr. Cotterill: Well, I did not ask him averages, we are dealing here in very general terms, and I think he takes these assumptions into account.

Exam. Waters: Read the question, please.

(Question, as above recorded, was repeated by the reporter.)

Exam. Waters: I think he can answer, taking into consideration the inherent weakness which such a question must have.

The Witness: The transportation cost is usually two to four times the cost of the material at the plant.

A difference of a few cents in transportation charges frequently affects to a substantial degree the decision of attempting to participate in a given construction enterprise (Rec., 1742). We watch variations in transportation charges pretty closely (Rec., 1743) and also determine in advance whether we can compete on a given project (Rec., 1744).

Q. When you do lose jobs upon which you bid, do you or do you not lose them sometimes because of freight rate differences?

Mr. Burchmore: I object to that on the ground that it is leading.

Exam. Waters: Read the question, please.

(Question, as above recorded, was repeated by the reporter.) (Rec. 1745.)

[fol. 474] Exam. Waters: I don't see any objection to that question.

The Witness: We do lose them sometimes on account of freight rate differences. At other times it is from other causes.

Q. Is the effect of freight rate differences perceptible to you only in instances of loss of jobs upon which you bid, or is the effect perceptible additionally by reason of your inability to compete?

Mr. Burchmore: I object to that question on the ground that it is a leading question which ought not to be addressed to the witness, and that the answer to the question is wholly immaterial and throws no light on any proper issue in this case.

Mr. Cotterill: I will respectfully address myself to counsel's objection. I do not want to get into too much discussion——

Exam. Waters: Before you discuss it, I don't just understand what you are driving at by that question.

Mr. Cotterill: I will explain it, and after I explain it, I think the form of the question will then become more evident. Lawyers before the Commission are in some dis-

agreement, I think, as to whether the proof of resulting damage essential to support an undue prejudice case shall consist only of that proof which goes to loss—loss transactions (Rec., 1746); lost bids, lost sales, or whether or not there may be maintained under section 3 of the act, and the corresponding provision of section 13, a complaint of undue prejudice where the testimony establishes not lost sales in the sense that a particular effort was made, but the inability to compete owing to the differences in charges. Now, the discussion in which I have been engag- [fol. 475] ing with counsel, and which the very shrewd and capable counsel from Chicago fully appreciates the significance of, bears upon that question. It is necessary to express the question in the alternative, because I am seeking by that question to have the witness say, if it be the fact, that not only is the effect of a maladjustment, assuming it to be a maladjustment, lost opportunities of sales when they bid, but there is an equal and perhaps more persistent effect resulting from the fact that he cannot bid at all. Now, it is in that alternative form that I am asking the question, and for those reasons.

Mr. Burchmore: And will you agree that even so phrased to the witness, the witness would not know that there was——

Mr. Cotterill: No, sir, he has given me every fact that my question is based upon.

Exam. Waters: Do you mean as part of your question that this witness very often does not make bids on account of (Rec., 1747) the existing situation?

Mr. Cotterill: I would not say very often, but I would say that the proof of damage resulting from a maladjustment need not be limited to lost sales, but extends as well to proof that it was concluded not to try to make a sale by reason of the differences in the freight transportation charges. Now, the question whether that is or is not sufficient is a question still pending before the Commission, and I think in one of the courts.

Exam. Waters: May I ask what question is being put to the witness?

(Question, as above recorded, was repeated by the [fol. 476] reporter.)

Mr. Burchmore: I object to the question on the grounds stated.

Exam. Waters: He may answer.

Mr. Burchmore: I take an exception.

The Witness: It is evident in both instances.

Mr. Burchmore: May I ask that the witness state in his own language what is evident in both instances?

The Witness: That in lots of cases we do not bid, as well as in some cases where we bid and lose. In other words, there are instances where we do not bid at all, due to differences in freight rates (Rec., 1748).

There are portions of Georgia territory where we do not compete at all, as for example north Georgia, north of Atlanta, because it was useless due to the differences in rate between the stone people in North Georgia and ourselves, where their hauls are shorter than ours. Practically in all instances we pay into north Georgia a joint line differential, whereas our competitors in North Georgia do not (Rec., 1749), and shipping to central parts of Georgia we have to observe the freight differences to get the business. We have had recent instances where we failed to bid because of freight rate differences in Georgia (Rec. 1750). That condition has existed for some time, I can't recall exactly how long. Generally speaking, shipping from Montgomery into Georgia involves greater distances than from within Georgia than from competing producing points within Georgia. In other words, we start with a higher freight rate than our competitors in Georgia.

[fol. 477] Q. Then to that extent has that condition always been one to be dealt with by your company?

A. It has.

Mr. Burchmore: Just a moment, he answered before I could interpose an objection. That is a leading question and highly objectionable, and I ask the Examiner, the witness having answered before objection could be made, to rule that leading questions shall be dispensed with.

Exam. Waters: I think I have indicated the best I can that they should not be asked. Of course, it is hard sometimes to keep out some things that appear leading, but I do (Rec. 1751) hope that counsel will be very careful.

Mr. Cotterill: I am constantly trying to do so, your Honor.

Mr. Burchmore: Now that question was objectionable as being leading, as implying a material fact in this case which the witness has not touched upon.

Exam. Waters: What was that question?

(Question, as above recorded, was repeated by the reporter.)

Exam. Waters: What is the matter with that?

Mr. Burchmore: He implies that they have always had higher rates from Montgomery into Georgia than within Georgia, which is not the fact.

Exam. Waters: I thought he meant they had longer distances.

Mr. Burchmore: But his previous question related to [fol. 478] rate and not to distance.

Exam. Waters: I asked him how long this rate difference had existed.

Mr. Burchmore: Yes, sir, and he was there testifying about a difference in mileage, but he is now asked about a difference in rate.

Exam. Waters: I think he meant to say that he had a natural handicap by reason of the fact that he has a longer distance, even if the rates were on an equal level (Rec., 1752).

Mr. Burchmore: But the leading questio- implied that under that natural handicap he had a difference in rates, which I think he will not attempt to urge.

Mr. Cotterill: I do attempt to urge it. This record deals with every phase of the transportation charges from Alabama into Georgia prior to the interstate revision, and I am not going to undertake at any time in this examination to lay a new foundation for testimony when I think the record already contains it. The Examiner's assumption was correct that my question was directed to the fact that under normal conditions the hauls from Alabama are longer than from Georgia, and counsel properly inferred that in addition to the establishment of that as a physical fact I intended in my question, and I intend later on in another connection, to allude to that circumstance as bearing upon the problem we are here dealing with in its effect on freight rates (Rec., 1753).

There has always been a difference in the distance against us, as well as against the differences in rates, which has been intensified by reason of the interstate revision into [fol. 479] that portion of Georgia. We are able to ship the further distance through Georgia into South Carolina in competition with Georgia producers while we are unable to a substantial extent ship into north Georgia in competition with Georgia producers because there are portions of South Carolina near Georgia where we have single line hauls, and are able to get in there with small differences. Such hauls are interstate and the interstate rates from Georgia to South Carolina are constructed in the same manner as interstate rates from Alabama into South Carolina (Rec. 1754).

Q. In testing the effect of the rate differences as between your interstate charges into Georgia and the intrastate charges *charges* within Georgia, would it be of any significance that your tonnage shipments into Georgia at a given time (Rec. 1754) increased or decreased in the aggregate?

Mr. Burchmore: Well, I don't understand that question as I hear it. It seems to me to call for the conclusion of the witness that the witness is hardly competent to give, which is a conclusion that the Commission would have to reach upon all of the facts applied to the situation, and not upon any limited facts implied in the question ifself.

Exam. Waters: It seems to me that you might ask him whether at a certain time his shipments decreased or increased. He could give his opinion as to the case of it, what he thinks about it, but the ultimate fact has to be determined by the Commission.

Mr. Cotterill: By way of explanation of the question, and I think I framed it properly, I wanted by that question and answer to establish, if I could, that in the case of this [fol. 480] traffic there may be a maladjustment of rates which the tonnage shipments from Alabama to Georgia may in fact have increased, notwithstanding a newly created maladjustment, and that the reverse can be true, that the removal of a rate maladjustment would not of its own accord necessarily increase the aggregate tonnage. Now, that was the import of the question, and that is why I asked him whether or not in testing the effect of a maladjustment

of rates in his business would it be significant that his tonnage increased (Rec. 1755) or decreased at a given time.

Exam. Waters: He may answer.

The Witness: It would not be significant, because other conditions vary the tonnage regardless of freight at different times. We endeavor to market our product at all other places in Georgia than those excepted because of present conditions. We absorb to some extent freight disadvantages in conducting our business into those places in Georgia where we do ship. That absorption varies at different times due to other facts (Rec. 1756).

Our competitors in Georgia are actively seeking the same jobs that we do. Most of our shipments are to Atlanta and south of Atlanta, the entire southern portion of the state. Practically all destinations in Georgia are prospective points of consumption due to road work. In the past Atlanta has been the large consuming point and there have been some points south of Atlanta. That is truer of years gone by than recently or at the present time (Rec. 1757). Conditions have appeared to change lately. There are large quantities of shipments being made to blind sidings, [fol. 481] but it cannot be told beforehand where shipments will be made (Rec. 1758).

Cross examination.

By Mr. Burchmore:

The plant of the Roquemore Gravel Company is on one side of town and the Alabama Sand and Gravel Company is on the opposite side of town. The two companies produce and ship sand and gravel at this time. It is washed and screened gravel. We don't produce clay gravel (Rec., 1759). We produce sand (Rec., 1760).

Mr. J. D. Roquemore is still president and general manager of the Roquemore Gravel Company (Rec. 1761).

Exam. Waters: I am saying that for the benefit of all as much as Mr. Burchmore. The case is reopened, and this proceeding is a part of the old proceedings. That is my position.

Mr. Burchmore: I think we all so understood, Mr. Examiner. There is no criticism of your ruling at all. There

is an exception taken to it, just as though it had been made by the power of the 11 Commissioners (1764).

The current prices obtained by Montgomery producers for washed gravel are 15 cents to 90 cents per ton. We do not produce clay gravel and I do not know the current prices obtained for that product produced in the Montgomery district because of its fluctuations and the small quantities now being sold (Rec., 1765). The Roquemore Company does not produce both washed gravel and sand in the same proportions. We usually produce what the market will consume (Rec., 1756). At the present time with our companies the production of gravel is not a by-product of the production of sand.

Q. Would you say that with your companies the production of sand is a byproduct of the production of gravel?

A. That is something that varies at different times, it is controlled by the consumption.

In some instances, not often, our washed gravel produced at Montgomery competes with clay gravel. We compete with stone and other coarse aggregates. There is a compe-[fol. 482] tition of one type of road with another, that is to say, concrete with brick, concrete with limerock and concrete with penetrations. We have always sold gravel at LaGrange (Rec., 1767). There are other points that are producing material on which the freight rates are considerably lower than from Montgomery to LaGrange, Georgia. One of them is Columbus, Georgia, where there is a producer, but I don't know whether he has sold any of his products at LaGrange, Georgia. In our shipment to LaGrange they could move over two roads. Ordinarily they are made over the Atlanta & West Point and Western Alabama, the trunk line (Rec., 1768). I don't recall just now whether we have ever shipped over any other road from Montgomery to LaGrange or not. There are others who have a lower rate to LaGrange than we do.

I am not conversant with rates applicable within the state of South Carolina on these materials nor with the basis of intrastate rates in South Carolina on these materials. Of sand, washed gravel, clay gravel, crushed stone, slag and chert, some of them are produced in quantity in South Carolina (Rec., 1769).

The freight charges are ordinarily from two to four times the value of sand in this territory.

Q. Isn't it sometimes as much as 20 times the value of the sand?

A. I think at the time I answered that question two to four times was referring to gravel as well as sand (Rec., 1771). It depends on the length of haul and varies considerably at different points. I have never had any experience with the cost of crushed stone. I do not know whether these materials are customarily sold at prices substantially above or only slightly above or under the cost [fol. 483] of their production.

(Witness Excused.) (Rec., 1772.)

H. T. Youmans was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am in the clay gravel business at Ellenton, S. C., only a half interest in the Ellenton Gravel Company, which I am superintendent and general manager. Ellenton is on the Charleston and Western Carolina R. R., 22 miles east of Augusta on the Port Royal division. Our output is clay gravel only (Rec., 1773).

We have been operating more than four years, 20 years in all, but four years in Ellenton. Before going to Ellenton we operated at Steele Creek, S. C., Beach Island, S. C., and Hamburg, S. C. Steele Creek and Beach Island are also located on the Charleston and Western Carolina, but Hamburg is on the Southern out of Augusta. Our total tonnage runs from 100,000 to 200,000 tons and from 2,000 to 5,000 cars per year. Our largest shipments have been in Georgia the past 15 years, shipping a number of cars to the Coastal section, Savannah, and Waycross and some as far as Quitman. For the past few years, our company, either at Ellenton or one of the nearby points, has been shipping into Georgia (Rec., 1774).

I would like to state that there have been one or two changes made in the rates that curtailed our business in Georgia quite a little, but the changes made effective May 1st have put us out of Georgia. We had orders at that time, and they wired us to cancel with 24 hours, and we have been out of the business since that time in Georgia. We have not had any further orders in Georgia at all. That was May [fol. 484] 1, 1928. Since that date our company has found itself unable to do business in Georgia.

I would just like to call attention to page 2 of this exhibit 100-B put in by Mr. Doss.

The distance in mileage from Ellenton, S. C., and from Norris, Ga., which is a competitive clay gravel shipper in the state of Georgia—my mileage is 78 miles from Ellenton, S. C., to Pillen, Ga., and from Norris, it is 76 miles, a difference of two miles (Rec., 1775).

My rate is $1.05 per ton, and the rate from Norris, Ga., is only 90 cents, a difference of 15 cents per ton, and a difference of only two miles.

Referring to page 4 of the same exhibit, from Ellenton, S. C., to Midville, Ga., the distance is 75 miles, and the rate is $1.15 per ton, and from Norris, Ga., to Midville is 67 miles, making a difference of only eight miles, and the rate is 80 cents per ton, a difference of 35 cents per ton with a difference of only eight miles. Our haul is a joint haul. I think most of these points are joint line hauls, but I think they use the single line rate over the joint line haul in Georgia since May.

I refer to page 12 of the same exhibit. From Ellenton to Waynesboro, Ga., is 57 miles; from Norris, Ga., to Waynesboro, is 55 miles—a difference of two miles. The rate from Ellenton, S. C., is 95 cents, and from Norris, Ga., 80 cents, a difference of 15 cents per ton, and only two miles difference in distance.

Page 15, to Vidalia, Ga., from Ellenton to Vidalia is 126 miles, and from Norris, Ga., to Vidalia, 111 miles and (Rec., 1776) the rate from Ellenton is $1.35, and from Norris, [fol. 485] $1.10, making a difference of 25 cents per ton.

Then refer to page 46, Savannah, Ga.—from Ellenton, S. C., to Savannah, Ga., is 103 miles. From Norris, Ga., to Savannah it is 152 miles, and my rate from Ellenton, S. C., is $1.25 per ton, and from Norris, Ga., it is $1.20 per ton,

five cents difference per ton, with 49 miles difference in mileage. I have the shortest mileage by 49 miles, and the highest freight rate by five cents a ton, and these rates and differences exist practically all over the State of Georgia. I have been shipping to Georgia for nearly 20 years, but I am totally out of the state of Georgia now, and consequently my company has been suffering a loss, and we haven't done anything since May 1st.

Our clay gravel sells for about 35 cents a ton f. o. b. the plant, $14 a car, and at that price there is little opportunity to absorb differences in freight charges to get business (Rec., 1777).

Now, with the operations of the plant and overhead expense we have, we used to get 50 or 60 cents a cubic yard, and later 40 cents and 50 cents a ton, but competition has brought the price down to 35 cents a ton, and we have no way of making further reductions f. o. b. the plant. The difference in freight rates prohibits us from selling in Georgia at all because they can buy it and ship it for less than I can from North Carolina for a shorter distance. The reasons assigned for the cancellation of those contracts was the change in freight rate. I had one prospective order at Waycross, Georgia, at the time, bid on that, but the change came along just before that, May 1, 1928 (Rec., 1778).

[fol. 486] If the freight rates from South Carolina into Georgia were placed on the same mileage basis with the freight rates intrastate Georgia, we could do business in the Coastal section of Georgia where we usually have done business, Savannah, Brunswick, Waycross, and that section. Yes, I have shipped to Vidalia, Waynesboro, Savannah and Millen; lost an order at Waynesboro this year, and with the mileage I had I should have gotten it, but the competitors could get in there over more than one line cheaper. There are only one or two of us in the clay gravel business, operating plants on the main line of the Charleston and Western Carolina in South Carolina, operating at the present time, and some other sand operations (Rec., 1779).

Our plant is just over the river out of Georgia, 22 miles east of Augusta and 18 miles by rail from the Georgia State Line, but across the river is only about 3 miles.

There is nothing further that I know of, except that I think if the rates were all on an equal basis in South Carolina, and Georgia, and the different states, 100 miles would be 100 miles for any shipper, and the shipper having the nearest mileage, it would be fair for them to get the business, but as it is, some of our competitors can ship at greater mileage than we can at a less freight rate.

Some shippers ship over three or four of these little short lines, where I have a one line haul. The Charleston and Western Carolina is owned by the Atlantic Coast Line. They can ship over three or four railroads in Georgia for less money than I can over a one line haul (Rec., 1780).

[fol. 487] Cross examination.

By Mr. Webster:

I can't say positively why I lost the contract at Waynesboro. Mr. Graves is here and he would know, I imagine.

By Mr. Graves:

The reason neither you nor I got it is that the buyer got it from local locations and hauled it by trucks at 17 cents a yard instead of a dollar and something in freight (Rec., 1781).

I know of no difference between the Charleston and Western Carolina and the A. C. L., it has always been considered a one line haul, and I am now shipping over A. C. L. and C. N. W. C. to Barnwell, S. C. (Rec., 1782).

Material from our Ellenton plant to Millen, Georgia, 78 miles, would be moved over the C. N. W. C. to Augusta, and the Central of Georgia out of Augusta. There may be other routes; there are two or three other roads over there but I don't know which ones they are (Rec., 1783). I don't know that my competitor at Norris, Georgia, would ship over any shipping to Millen.

There have been some two or three jobs up in that particular section in the last 12 months that I bid on, and got the freight rates quoted by the railroads, and got the difference in rates between me and the Georgia competitor, and I found the difference was so great I couldn't get in there. I never have shipped anything to Millen because

when I investigated the rates I found the difference was so great that I could not even get in there. I haven't made any shipments to Midville, Georgia. I know what the railroads quoted me as the rate to Midville. It was $1.15 (Rec., 1785).

[fol. 488] I haven't looked it up and don't know what railroads would carry my shipments from Ellenton to Midville, if I shipped any. If you will give me a map I can tell you. I don't know what railroads I would ship over if I shipped to Midville, Ga. (Record, 1786). The initial carrier to whom I would give it would be the Charleston and Western Carolina, but I don't know what road would haul it to Midville.

Yes, I have shipped to Savannah, Georgia, in the last two or three years and over the Charleston and Western Carolina and Atlantic Coast Line, the latter as the delivering carrier. I haven't shipped over any other route in the last twelve months. I don't know by what route the distance of 103 miles from Ellenton to Savannah is figured, nor whether it is over the C. N. W. C. or A. C. L. or some other route (Rec., 1787). They have a junction at Allendale, S. C., with the Southern and one at Fairfax, S. C., with the Seaboard, and one at Yemassee, S. C., with the A. C. L. Practically all of these freight rates have applied C. N. W. C. and A. C. L. as a one line haul into Savannah and beyond. I have shipped some over the Seaboard and some over the Southern. On May 1, 1928, our rates were changed from our quarry to points in Georgia; to Savannah proper for instance, the rate was $1.17 and they raised it to $1.25 and that took effect about May 1, 1928 (Rec., 1788).

I don't know about rate changes in the state of Georgia on May 1, 1928; the mileages were different. I got the Georgia and Florida Railroad to quote me the Georgia rates from a competitive shipping point and they showed a considerable difference to a number of points (Rec., 1789).

[fol. 489] The only thing that I can tell about was several particular rates, for instance the Savannah rate was raised from $1.17 to $1.25. The Brunswick rate was lowered from $1.53 to $1.45, and two or three other similar changes, from five cents to 10 cents. I just happened to remember them.

I don't remember the exact date of the change in the Brunswick rate, but I do know that the change in the Savannah rate was May 1, 1928, when I was raised from $1.17 to $1.25 (Rec., 1790).

Exam. Waters: I want some explanation of the increase in the interstate rate. Could that have been due to some provision in the Georgia order? There is some provision in there about increased interstate rate. Mr. Doss, you can answer that perhaps?

Mr. Doss: I don't know, let me see about that. Mr. Examiner, there have been no changes in the Ellenton rates since they were established under docket 17517, effective in 1927.

Exam. Waters: What month?

Mr. Doss: October 1, 1927, as I recall. There is a provision in the Georgia Commission's order about the interstate rates not being lower than the Georgia rates over the same route, but of course the Georgia rates being lower than the interstate rates, no change was made in the interstate rates by reason of that provision in the Georgia Commission's order.

Exam. Waters: All right, Mr. Burchmore.

Mr. Doss: The thing Mr. Youmans is trying to explain is that his differences were changes May 1st.

The Witness: I don't know what brought about the [fol. 490] change altogether, but I do know that I have shipped to Savannah, the country there, 100 cars since then, and I paid $1.25 on it where I had been paying for several years $1.17. I know it was raised from $1.17, but I don't know just how (Rec., 1791).

When the Charleston and West-rn Carolina rates were revised on sand and gravel and crushed stone, it practically put us out of business. I have had all my contracts cancelled in Georgia more than once (Rec., 1792).

(Witness excused.)

Richard Simmons was thereup called as a witness and being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I reside at Columbia, S. C., and am sales manager for the Weston and Brooker Company, engaged in producing and

selling crushed stone, crushed granite and riprap stone. We have been operating about 15 years and our annual output is about 300,000 tons. We have moved certain tonnage into Georgia, practically all through the Coastal section of the state (Rec., 1793).

My testimony will be substantially the same as Mr. Youmans'. However, what we really have in mind as future business, and not tonnage that has been missed in the past, and if the intrastate rates of Georgia were put on the same basis that our rates are from Columbia, we feel tha- we would move stone into the state. I think that that would go into the section from Augusta out on the Georgia and Florida Railroad, and in that section, a radius of I should [fol. 491] say from 50 to 75 miles of Augusta. We are shipping a small tonnage now to Savannah that comes into competition with producers who are located in Georgia.

There are a few points here shown on Mr. Doss' exhibit 102-B, for instance, the rate from Columbia to Wrens, Ga., is $1.25, and from Lithonia the present rate is $1.10. The mileages there are approximately the same, Columbia being four miles nearer, but the present rate to Wrens from Lithonia is $1.10, which is 15 cents under our rate (Rec., 1794).

Crushed stone is being produced now at Lithonia.

Waynesboro, Ga., the Columbia mileage is 115 miles, and the rate is $1.25, and Lithonia is 148 miles, and the present rate is $1.20. If it were put on the interstate scale it would be $1.25.

I believe that you would find checking most of the points, that that would pretty generally cover it that it would bring the rates close together, and in some instances put the Columbia rates under the rates now enjoyed by the Georgia shippers.

Our plant is about 80 miles from the borderline. We have shipped as far as Brunswick. We ship rather extensively from our Columbia plant to points in South Carolina (Rec., 1795).

The South Carolina Railroad Commission recently issued an order putting in the rates as given in docket 17517, Scale 1, to apply either joint or single line for general application. In other words, the joint line differentials have been eliminated in South Carolina, on intrastate business, [fol. 492] just as in Georgia. I think we would enjoy a

little better competitive rate than we now have if the interstate rates were used. As long as the intrastate rates in Georgia remain as they are I should think the rates in South Carolina should be on the same basis with the rates in Georgia (Rec., 1796). I think the same rates should be in effect in this territory, interstate and intrastate. I advocate a uniformity in the level of the scales, both state and interstate.

Cross-examination.

By Mr. Webster:

After we lose a contract in some instances we attempt to analyze who gets the business and why, but it is hard to say anything definite as to whether our greatest competition in Georgia comes from Alabama and Georgia shippers. It is true that it comes from both. Where the greatest competition comes from would depend entirely upon conditions (Rec., 1797).

By Mr. Burchmore:

In shipping from our plant at Columbia, S. C., to Wren, Ga., the product would move over the Southern to Augusta and I believe Georgia and Florida from Augusta. I don't know whether there is any other route that might be used. If our competitors shipped from Lithonia, Ga., to Wren, Ga., it would move over the Georgia Railroad initially. I believe that is local to the Georgia Railroad. As far as I recall we had not shipped anything to Wren, but as I said at the start what we are really interested in more than anything else is future business. We have been in business at Co- [fol. 493] lumbia fifteen years, and I have been with the company four years, and as far as I can remember, at no time have we shipped to Wren (Rec., 1798). We have moved no stone to Swainsboro.

By Mr. Watkins:

The proportion of our companies' output sold in Georgia, has been very small. It was greater four years ago than it is now (Rec. 1799). With one or two exceptions it has been a small part of our business. Generally speaking there has not been a regular movement.

Redirect examination.

By Mr. Gwathmey:

As a rule the large tonnage for road jobs which takes the bulk of our stone is shipped to small out of the way places and so there is no way of telling when or where it will or will not move. There is no way of knowing definitely whether there is a likelihood of a shipment in future to any of the places named in Georgia (Rec., 1800). It depends upon whatever construction work is under way.

By Exam. Waters:

If we had an equality of rates from Columbia it would depend largely upon conditions at the time whether we could compete successfully with Georgia producers. I see no reason why we should not get a fair share of the business.

By Mr. Gwathmey:

We have moved a considerably tonnage of rock into Florida in the past through Georgia and have shipped a [fol. 494] great deal of our products into North Carolina (Rec., 1801).

By Exam. Waters:

We would hardly go more than 75 miles west of Columbia. The average haul of our traffic varies considerably. In 1926 and 1927 a large part of it was considered long haul movements. By that I mean interstate movements, say over 130 or 140 miles. In 1928 it was practically all intrastate within South Carolina (Rec., 1802).

(Witness excused.)

H. S. Angle was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I represent the Dixie Sand & Gravel Company, one of the principal complainants in the original case. I have just a statement that I want to submit at this time.

The Dixie Sand & Gravel Company, as one of the principal complainants in docket 17517 and allied cases, have no interest in the present proceedings, except to have the intrastate rates on sand and gravel in the territory involved harmonized with the interstate rates.

At the present time interstate shippers are penalized by the application of a joint line scale, whereas none exists in Georgia.

Furthermore, up to and including 440 miles there are 38 instances either for single or joint line application on interstate shipments, in which the present Georgia scale is at [fol. 495] variance with the scale prescribed by the Interstate Commerce Commission in docket 17517. Of this number, 29 represent rates which are lower for certain blocks than the interstate scale, and nine which are higher than the interstate joint line scale, while in 22 instances it is lower in amounts ranging from five to 25 cents per net ton.

We have no desire at this time to submit any additional testimony but wish merely to state that we can see no reason or (Rec., 1803) justification for a plant located just over the state line from Chattanooga being permitted to ship to joint line haul points in Georgia on a single line scale, while Chattanooga is compelled to use a joint line scale with rates from five to 25 cents per net ton higher for the same distances and over the lines of the same carriers.

In short, our contention is that there is no justification for different scales on sand, gravel, and crushed stone on interstate traffic than apply on intrastate traffic for hauls of the same length. I have no exhibits to offer.

(Witness excused.)

L. V. Crane was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Walker:

I am assistant to the vice-president in charge of the traffic of the Southern Railway System Lines, with headquarters at Washington, D. C. (Rec., 1805). I testified in the previous hearing of docket 17517 and since then have prepared [fol. 496] certain exhibits which I desire to offer.

In connection with my exhibit 103-B, I want to call particular attention as to the manner in which even the present Georgia scale is applied in connection with rates on sand from pits on the Atlanta, Birmingham, & Coast Railroad, and Central of Georgia Railroad, in the vicinity of Junction City, Ga.

(The same was thereupon received in evidence marked "Carriers' Exhibit No. 103-B, Witness Crane".)

The pits on the Central of Georgia Railway are local to that line, and likewise the pits on the Atlanta, Birmingham, & Coast Railroad are local to that line (Rec., 1805). That is not a part of a system, it is operated separately.

The short line distance from Junction City, Ga., to Atlanta, Ga., over the Atlanta, Birmingham & Coast Railroad is 104 miles, and the present Georgia scale for that distance is $1.00 per ton, and the docket 17517 scale for that distance would be $1.10 per ton.

That is the Atlanta, Birmingham & Coast all the way.

From the pits on the Central of Georgia Railway which are located between Howard and Junction City, Ga., the Central of Georgia under the present tariff provides for the application of Junction City rates from those pits. There is no connection between the Central of Georgia Railway and the Atlanta, Birmingham & Coast Railroad at Junction City. No interchange, no, sir.

The haul over the Central of Georgia Railway to Atlanta, from Howard, Ga., is 163 miles, and from Junction City, [fol. 497] Ga., 166 miles, and these pits are located somewhere between Howard and Junction City on the Central of Georgia Railway (Rec., 1806), so that the sand which moves from these Central of Georgia pits to Atlanta, moves somewhere in the neighborhood of 163 miles or 166 miles, but it moves at a rate that is $1.00 and is based on the distance of 104 miles over the Atlanta, Birmingham & Coast Railroad.

Generally speaking, the rates on traffic generally from local stations on the Atlanta, Birmingham & Coast Railroad or from stations on the Central of Georgia Railway to Atlanta, Ga., are restricted so as to apply only over that line. However, that does not appear to be the case with respect to rates on sand. Although these pits are local to these two lines, the rates that are applied to the traffic are the Junction City rates, and the rates from Junction City

are not restricted as to routing, and apparently the tariff can be applied for joint line movement from those pits to Atlanta.

For example, from Junction City, Ga., under the head of Central of Georgia Railway, the rate can be applied for Southern Railway delivery via Central of Georgia Railway, Fort Valley, Ga., and Southern Railway, as shown opposite the letter G, and in the absence of restrictions in the tariff the $1.00 rate based on the Atlanta, Birmingham & Coast distance would be applied over that route. We have never joined in any such route with the Central of Georgia Railway (Rec., 1807).

It is our position that if the route is to be kept open, that there should be charged over that route the mileage scale [fol. 498] for the distance via that route.

Under the present Georgia scale it would be $1.20 per ton, and under the interstate scale it would be $1.35 per ton.

Going back to the rates for Central of Georgia Railway delivery, and having in mind that there is no connection between the Central of Georgia Railway and the Atlanta, Birmingham & Coast at Junction City, Ga., the rate under the interstate scale from the Central of Georgia points in the vicinity of Junction City to Atlanta would be $1.30 per ton. The rate from Junction City, Ga., via the Atlanta, Birmingham & Coast Railroad is also unrestricted as to routing, and so far as the tariff is concerned, apparently it would apply via Atlanta, Birmingham & Coast, Woodbury and Southern Railway.

Under the Georgia order, and the $1.00 rate would apply. In that way this sand could get not only delivery on the Southern Railway at Atlanta for private and assigned sidings, but also team track delivery. The Southern Railway has never authorized a route with the Atlanta, Birmingham & Coast Railroad from these points on the Atlanta, Birmingham & Coast to Atlanta, and it is our position that if any such route is kept open, the rate to be applied should be the mileage rate for the distance over that route.

In the exhibit is also shown the rates from Gailliard, Ga., on our Fort Valley branch. The rate from Gaillard of $1.00 to Atlanta applies only via the Southern Railway.

While the exhibit also shows the rates from Gaillard to Atlanta in connection with the Atlanta, Birmingham &

[fol. 499] Coast, Central of Georgia, and Atlanta & West Point, as a matter of fact the exhibit is not altogether accurate in that respect. There are no rates over those routes. There is only one rate from Gaillard to Atlanta, and that is the rate over the Southern Railway Company, and the rates shown under the heading of present rates to Atlanta for the Atlanta, Birmingham & Coast, Central of Georgia, and Atlanta, Birmingham & Coast, Central of Georgia, and Atlanta & West Point, are nothing more than the Georgia scale for those particular distances.

The rate from Gaillard to Atlanta via the Southern Railway provides that when the shipments are for delivery on connecting lines at Atlanta, the rate which will apply on those shipments will be the Atlanta rate less $2.25 per car. In other words, we will absorb connecting line switching to the extent of $2.25 per car (Rec., 1809). Ordinarily we do not absorb switching charges from local territory like Gaillard, Ga., but we had to do that in order to meet competition from these Central of Georgia railway pits where under their switching tariff they authorize the absorption of switching charges at Atlanta to the extent of $2.25 per car.

Going back to Junction City via the Atlanta, Birmingham & Coast Railroad, it will be noted that the rates to Atlanta as well as to points in the Atlanta District as shown on the exhibit, are invariably less than the rates for corresponding distances under the interstate mileage scale. The rates from Junction City, Ga., via the Central of Georgia Railway, or the rates from Howard, Ga., via the Central of Georgia Railway to Atlanta, or to points in the Atlanta district, are substantially less than the rates under [fol. 500] the interstate mileage scale, due to the fact that from these local pits on the Central of Georgia Railway, the Central of Georgia in the present tariff authorizes the application of Junction City rates from their pits. It is my understanding that until recently all of the shipments from the Central of Georgia Railway pits were waybilled from Junction City, and that may still be the practice, but in any event in a recent supplement to the Georgia tariff, the Central of Georgia Railway Company had inserted a note providing for the application of Junction City rates from Heath Track, Kirkpatrick sand pit track, and Kirkpatrick wash track. I assume those are the names of those

pits on the Central of Georgia Railway between Junction City and Howard, Ga. (Rec., 1810).

Under my heading of Present Rate, I mean those are the present rates in effect from and to those points. By Georgia scale, I called attention to the fact that the Central of Georgia Railway from their pits do not even apply the Georgia scale, but rather apply Junction City rates made via the Atlanta, Birmingham & Coast Railroad, although there is no connection between the Central of Georgia and the Atlanta, Birmingham & Coast at Juncition City, Ga. Moreover, even if there were a connection between the Central of Georgia Railway and the Atlanta, Birmingham & Coast at Junction City, Ga., and the interstate scale were applied, it would be the interstate joint line scale rather than the interstate single line scale.

The pits on the Central of Georgia are somewhere between Junction City and Howard, Ga., and it is only four miles from Junction City to Howard. That is what is [fol. 501] called the Junction City district (Rec., 1811).

I just wanted to call attention specifically to this situation because the source of discrimination flows not only from the fact that the Georgia scale is less than the interstate scale, but also because the present Georgia mileage scale is not applied from these pits, more particularly on the Central of Georgia Railway.

My exhibit No. 104-B is a statement of the present rates from Birmingham, Montgomery and Chattanooga to Atlanta and points in the Atlanta district.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 104-B, Witness Crane".)

All of the rates shown on exhibit 104-B are based on the docket 17517 scale.

There should be one correction made on this exhibit, the rate from Montgomery, Alabama, to Fort McPherson, Georgia, should be $1.30 per ton instead of $1.40 per ton, and as to that rate from Montgomery, Alabama, to Fort McPherson, Georgia, it is not exactly on basis of the interstate scale. The interstate scale would provide a rate of $1.40 for that joint line distance, but apparently inasmuch as the rate from Montgomery to Atlanta on the scale is $1.30, and inasmuch as it appears that there is some sort of joint arrangement between the Central of Georgia Rail-

way and the Atlanta & West Point Railroad between East Point and Atlanta, they evidently figure in some way that under the fourth section they are not permitted to carry a [fol. 502] rate higher than the Atlanta rate to Fort McPherson, Ga. (Rec., 1812). I am not familiar with that situation, but aside from this rate from Montgomery to Fort McPherson, all the other rates shown on the exhibit 104-B, are exactly on basis of the docket 17517 scale.

They are joint line or single line according to the routes shown below here.

My exhibit 105-B is similar to an exhibit filed by Mr. Doss, and merely shows the former Georgia scale, the present Georgia scale and the interstate scale. That exhibit consists of two pages.

(The same was thereupon received in evidence, marked "Carriers' Exhibit 105-B, Witness Crane".)

The joint line traffic handled by the Southern Railway in Georgia is shown by Exhibit 106-B (Rec., 1813), which has two pages, the first showing the intrastate tonnage of the Southern and the second page the intrastate tonnage of the Georgia Southern and Florida Railway for the first four months of 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 106-B, Witness Crane").

From the first page of exhibit 106-B, it will be noted that of the 2665 cars of gravel and sand which the Southern Railway handled intrastate in Georgia for the first four months of 1928 1111 cars were for hauls entirely on the Southern Railway, and 1554 cars were either delivered to connections or received from connections.

Of the cars which originated on the Southern Railway Company, 1111 cars were destined to points on thee South-[fol. 503] ern Railway, and 623 cars were destined to points on connecting lines. In other words, of the sand and gravel originated on our line, the majority was destined to points on our line, but taking into account cars which we received from connections, there were a greater number of cars which moved for joint line movement than for single line movement.

That is on sand and gravel.

On crushed stone there were 178 cars which originated and were destined to points on the Southern Railway (Rec,. 1814). There were 89 cars which originated on the Southern Railway and destinated to points on connecting lines.

We received from connections, 882 cars which were destined to points on our lines, and we also received 586 cars from connecting lines which we delivered to another connecting line. In that case there were 1557 cars for joint line movement, and but 178 cars for single line movement, on crushed stone.

The second page of the exhibit is gotten up in similar form, except that it covers the Georgia, Southern & Florida Railway, instead of the Southern Railway, and, of course, the tonnage of the Georgia, Southern & Florida Railway is very much less than the Southern Railway tonnage. It also shows that the preponderance of movement handled by the Georgia Southern and Florida was joint line traffic (Rec., 1815).

The Georgia order became effective May 1, 1928, but those were the only figures we had available at the time this was made up. You will probably recall that in former statistics we merely showed the number of cars originated and the number received from connections (Rec., 1815).

[fol. 504] Beginning this year, we show the cars originated by us and the number of these cars that went to connections, and likewise we show as to cars received from our connections whether they went to points on our line or to other connections.

During this period was the joint line differential in effect within the state of Georgia, under the Georgia Commission's own order.

There was a joint line differential up to 110 miles.

Exhibit No. 107-B covers the entire Southern Railway Company and the entire Georgia Southern & Florida Railway for the first four months of 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 107-B, Witness Crane.")

You will note as to the Southern Railway, on gravel and sand, that there were 6262 cars which originated and were destined to points on the Southern Railway and 8385 cars which were either received from connections or delivered to connecting lines (Rec., 1816).

As to crushed stone, there were 6415 cars which originated at and were destined to points on the Southern Railway, and 5842 cars which were received from and delivered to connections.

The second page of exhibit 107-B shows similar information as to the Georgia, Southern & Florida Railway.

You will understand from these exhibits that there is a considerable amount of joint line tonnage in the movement of sand and gravel, crushed stone and related articles. As to whether that is fairly representative of the South as a whole I can't tell you except as to our lines. Along the lines of your question, Mr. Examiner, and hav- [fol. 505] ing in mind the situation in South Carolina, where the South Carolina Commission recently wiped out the joint line arbitrary, in the first four months of this year the Southern Railway Company in South Carolina had 1327 cars of sand and gravel which originated on its line and which were destined to points on its line. As to traffic received from connections, or delivered to connections, the number of cars was 1948.

Now, as to crushed stone, the situation was somewhat different. We had 2896 cars of crushed stone which originated on our line, and which were destined to points on our line, and 813 cars which were received from and delivered to connections.

That was in South Carolina alone.

Now, in Alabama we had a total of 1194 cars of sand and gravel, and of that number 515 cars were originated on our line, and were destined to points on our line.

As to crushed stone, we had 412 cars, and of that number, 39 originated at and were destined to points on our line. But the figures for the whole system are included in my exhibit 107-B.

Exhibit 108-B compares the present rates from Chattanooga, Tenn., on sand and gravel, which are on basis of the docket 17517 scale, with present rates from Gaillard, Ga., and what the present rates from Gaillard would be on basis of the docket 17517 scale to points on the Southern Railway in Georgia.

(The same was thereupon received in evidence, marked "Carriers Exhibit No. 108-B, Witness Crane.")

Going down the first page of this exhibit you will find numerous instances where the present Georgia rates are

lower than they would be on basis of the interstate scale. [fol. 506] There is one case, Carbondale, Ga., where the rate on the Georgia scale is higher than on basis of the interstate scale (Rec., 1818).

On page 2 of the exhibit there are likewise numerous instances where the rates from Gaillard on basis of the present Georgia scale are lower than they would be on basis of the interstate scale.

The distances are not always comparable, but I am measuring the rates from both points by the scale prescribed by the Interstate Commerce Commission. I have taken practically all of our stations in Georgia.

You will also note, that from Gaillard, Ga., the distances which control the present Georgia rates are often different from the distances which would fix the rates under the interstate scale. That is due to the fact that under the Georgia scale there is not any joint line arbitrary, and you just use the short line distance, whereas under the interstate scale of ten times a single line distance with the single line scale would make a lower rate than the shorter line distance with the joint line scale.

The third page of exhibit 108-B, also shows a large number of instances where the present rates from Gaillard, Ga., are less than they would be on the interstate mileage scale (Rec., 1819).

Exhibit 109-B compares the rates on gravel from Chattanooga, Tenn., to points on the Southern Railway in Georgia which are on basis of the docket 17517 scale, with the present rates on the Georgia scale from Stockbridge, Ga., compared with what the rates would be from Stockbridge, on the basis of the docket 17517 scale.

[fol. 507] (The same was thereupon received in evidence, marked "Carriers' Exhibit No. 109-B" Witness Crane.")

Going through this exhibit it will be found that there are numerous instances where the rates from Stockbridge, Ga., are lower than they would be on basis of the interstate scale.

On page 2 of the exhibit there are some instances for extremely long hauls where the present Georgia rates are higher than they would be on basis of the interstate scale. You will notice as to Brunswick, Ga., and some points intermediate to Brunswick.

Exhibit No. 110-B compares the rates from Chattanooga, Tenn., to points on the Southern Railway in Georgia with the present Georgia intrastate rates from Lumber City, Ga., to the same stations, and what the rates would be on the basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 110-B, Witness Crane.")

Here you will note on the first page that even as to Atlanta, Ga., the rate from Stockbridge, Ga. is five cents less than it would be on basis of the interstate scale.

On the second page of this exhibit there are numerous instances where the present Georgia rates are higher than they would be under the interstate scale.

That is for the longer distances.

On the third page of the exhibit there are some instances where the present Georgia rates are higher, and in other instances they are lower than the rates would be on basis of the interstate scale.

[fol. 508] Exhibit No. 111-B is a comparison of the present rates from Chattanooga, Tenn., to stations in Georgia on the Southern Railway, with the present Georgia state rates from Junction City, Ga., to the same stations, and also what the rates from Junction City would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 111-B, Witness Crane.") (Rec., 1821.)

Mr. Brooker: Mr. Examiner, may I call attention to a correction on this exhibit in the distance from Junction City, Ga. to Atlanta, Ga.? The route reference should be changed also. That should be 104 instead of 101, and the route reference should be F instead of E.

An examination of Exhibit 111-B will show that with the exception of the rate to Columbus, Ga. the present rates from Junction City, Ga. to all of these Southern Railway stations are less than they would be on basis of the docket 17517 scale.

Exhibit 112-B shows the rates on sand and gravel from Chattanooga, Tenn., to Georgia Railroad and Atlanta & West Point Railroad stations, compared with the present rates, and also what the rates would be on basis of the docket 17517 scale from Gaillard, Ga.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 112-B, Witness Crane.")

With the exception of the rate from Gaillard, Ga., to Atlanta, Ga., which in reality applies only over the Southern Railway, the present rates from Gaillard, Ga., to stations on the Georgia Railroad and the Atlanta & West Point Railroad are less than they would be under the docket 17517 scale.

[fol. 509] Of course, the rates from Chattanooga, Tenn., to these stations are on basis of the docket 17517 scale (Rec., 1823).

Exhibit 113-B shows the present rates from Chattanooga, Tenn., which are on basis of the docket 17517 scale, and the present rates from Gaillard, Ga., to Central of Georgia Railway stations in Georgia.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 113-B, Witness Crane.")

The exhibit also shows what the rates from Gaillard would be on basis of the docket 17517 scale.

An examination of this exhibit will show that with the exception of two destinations on page 2, the present Georgia intrastate rates are less than they would be on basis of the docket 17517 scale.

Exhibit 114-B shows the rates on sand and gravel from Chattanooga, Tenn. to Georgia, Southern & Florida Railway stations, compared with the present rates from Gaillard, Ga., and what the rates from Gaillard would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 114-B, Witness Crane.")

The rates from Chattanooga are already on basis of the docket 17517 scale, and it will be observed that the present rates from Gaillard are invariably less than the rates would be under the docket 17517 scale.

Exhibit 115-B shows the present rates on sand and gravel from Chattanooga, Tenn. to Georgia, Southern and Florida stations, compared with the rates from Junction City, Ga. to the same destinations, and what the rates would be from Junction City on basis of *of* the docket [fol. 510] 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 115-B, Witness Crane.")

Here again, it will be observed that the present rates from Junction City, are invariably less than they would be on basis of the docket 17517 scale.

Exhibit 116-B shows the present rates from Chattanooga, Tenn. to stations in Georgia, on the Louisville & Nashville Railroad, compared with the present rates from Gaillard to the same stations, and what the rates from Gaillard, Ga., would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 116-B, Witness Crane.")

Omitting Atlanta, which rate from Gaillard applies only via the Southern Railway, the rates in Exhibit 116-B from Gaillard, Ga., are invariably lower than they would be on basis of the docket 17517 scale.

Exhibit 117-B shows the present rates from Chattanooga, Tenn. to stations on the Seaboard Air Line in Georgia, between the Georgia-Alabama state line and Hamlet, N. C., the present rates from Gaillard, to the same destinations and what the rates from Gaillard would be on basis of the docket 17517 scale (Rec., 1824).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 117-B, Witness Crane".)

Omitting Atlanta again, the present rates from Gaillard are lower than they would be on basis of the docket 17517 scale.

Exhibit 118-B is a similar exhibit comparing the rates on gravel from Chattanooga, Tenn. to stations on the South-
[fol. 511] ern Railway in Georgia, with rates on crushed stone from Lithonia, Ga.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 118-B, Witness Crane".)

The docket 17517 scale would make no change in the present rate from Lithonia to Atlanta, Ga., but it would change the rates from Lithonia to Atlanta, Ga., but it would change the rates to all of the stations shown on the Southern Railway as indicated on the exhibit, for example, to Macon, Ga., the rate from Lithonia would be $1.25 on basis of the interstate scale instead of $1.10 as it is under the present Georgia scale.

Exhibit 119-B compares rates on sand and gravel from Chattanooga, Tenn. to Nashville, Chattanooga & St. Louis stations in Georgia, with rates from Junction City, Ga. to the same stations, and what the rates from Junction City would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 119-B, Witness Crane".)

With the exception of one destination, the present rates from Junction City are less than they would be on basis of the docket 17517 scale. I didn't investigate as to what points there are for shipments in Chattanooga to Georgia destinations so as to show every station. I have some information as to where some shipments have been made. My investigations disclose that. The movement of these materials from practically all the origins changes from time to time. In other words, the movement one month may be different than from the previous month, and the movement [fol. 512] one year may be different from the previous year, that is as to the destinations to which many of the shipments go (Rec., 1826). Of course, there are points such as the larger cities where the movements are right regular, but to the small points there is quite a variation in the situation from time to time. In my exhibit No. 114-B, I used the word joint lines scale from Gaillard to points of Georgia, Southern and Florida, that is, rates that would apply if the docket 17517 scale was effective, that is to say in my exhibit 114-B, I show that the docket 17517 joint line scale would make the rates from Gaillard, Ga., to points on the Georgia, Southern & Florida Railway. I was asked whether the single line scale applied to the distances over the Southern Railway in connection with the Georgia, Southern & Florida Railway would not be lower than the rates under the joint line scale, and for the joint line distances as shown on my exhibit. They would not be lower. The joint line scale for the joint line distances makes lower rates than would be produced by the single line scale for the distances over the Southern Railway in connection with the Georgia, Southern & Florida.

As an illustration, take Worth on the Georgia, Southern and Florida for a shipment from Gaillard, there are two different railroads, the Southern Railway and the Georgia, Southern & Florida, but under this interstate scale we apply

the single line scale between the Southern Railway and the Georgia, Southern & Florida.

By Mr. Burchmore:

Q. I don't want to debate that with you, I don't know anything about it. As a matter of fact, is it proper or necessary under docket 17517 to give the single line scale to [fol. 513] a joint movement over the Southern Railway and the Georgia, Southern & Florida (Rec., 1828)?

A. The Commission in the Live Stock case—I don't recall the docket number—found that as to live stock the single line scale should be applied for interline movements between Southern Railway System lines, and we have applied the docket 17517 scale in a similar manner.

From Gaillard to Worth is 77 miles over the Southern Railway, Fort Valley, Central of Georgia, Atlanta, Birmingham and Coast, and Georgia Southern and Florida, and produces a lower rate than via the Southern Railway and Georgia Southern & Florida, which is a distance of 263, via the Southern to Atlanta, to Macon, and thence via the Georgia, Southern & Florida, which would be the Southern System. And we apply single line rates under the decision of the Commission, in other words, the short line distance is 77 miles, represented by those four lines, and would make a rate of $1.05 (Rec., 1829).

Exhibit 120-B shows the present rates on sand and gravel from Montgomery, Ala., to stations in Georgia on the Nashville, Chattanooga & St. Louis Railway, compared with the present rates from Gaillard, Ga., and what the rates would be on the basis of the docket 17517 scale from Gaillard, Ga.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 120-B, Witness Crane.")

With the exception of the rate from Gaillard, to Atlanta, which applies only over the Southern Railway, the rates from Gaillard to points reached by the Nashville, Chattanooga & St. Louis Railway are less than they would be on basis of the docket 17517 scale.

[fol. 514] Of course I have merely selected Gaillard on exhibit 120-B, for example, to illustrate the situation. I could have used Junction City just as well as a point of origin and have shown substantially the same situation, that is that the rates from Junction City, Ga., for example,

to Nashville, Chattanooga, & St. Louis stations in Georgia are less than they would be on basis of the docket 17517 scale (Rec., 1830).

Exhibit 121-B shows the present rates on slag from Birmingham, Ala., to points in Georgia on the Southern Railway, compared with the present rates on stone from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 121-B, Witness Crane.")

The haul from Lithonia, to Atlanta, as shown on the first page of the exhibit, is a single line haul, and there would be no change in that rate, but the rates to practically all other stations shown on the exhibit from Lithonia, Ga., are less than they would be on basis of the docket 17517 scale.

You will note on page 3, to Macon, Ga., the present rate from Lithonia is $1.10 per ton, and on basis of the docket 17517 scale it would be $1.25 per ton. Some of these rates differ as much as 25 cents a ton. You will recall that in certain instances the present Georgia scale is lower than the docket 17517 scale, single line scale. The blocking is also somewhat different under the present Georgia scale (Rec., 1831).

Going back to exhibit 105-B, the Georgia single line scale [fol. 515] is less than the interstate single line scale, at 45 miles, 50 miles, 65 miles, 70 miles, 85 miles, 95 miles and 110 miles. That is the Georgia scale applied for single line hauls.

Exhibit 122-B shows the present rates on slag from Birmingham, Ala., to points in Georgia on the Geogia, Southern & Florida Railway, compared with the present rates on crushed stone from Lithonia, Ga., to the same stations, and what the rates from Lithonia, would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 122-B, Witness Crane".)

I assume it is understood that these rates from interstate points into Georgia are on basis of the docket 17517 scale.

That is true of all the interstate rates shown on all of these exhibits.

Exhibit 123-B compares the rates on slag from Birmingham, Ala., to stations in Georgia on the Seaboard Air Line, with the rates on crushed stone from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 123-B, Witness Crane".)

Exhibit 124-B shows the present rates on slag from Birmingham, Ala., to stations in Georgia on the Nashville, Chattanooga & St. Louis Railway, compared with the present rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit 124-B, Witness Crane.")

With the exception of Atlanta, the rates to points shown [fol. 516] on this exhibit, from Lithonia, Ga., are lower than they would be on basis of the docket 17517 scale.

On exhibit 123-B here again it will be noted that with the exception of Atlanta, which is a single line haul from Lithonia, Ga., the rates from Lithonia, to Seaboard Air Line Railway stations are less than they would be on basis of the docket 17517 scale.

Exhibit 125-B shows the present rates on slag from Birmingham, Ala. to stations in Georgia, on the Central of Georgia Railway, compared with the rates on crushed stone from Lithonia, Ga. to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale (Rec. 1833).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 125-B, Witness Crane".)

It will be noted that the present rates from Lithonia, Ga., to stations on the Central of Georgia Railway are invariably less than they would be on basis of the docket 17517 scale. Not all the time are short line distances shown because sometimes a single line scale for the longer single line distance will make a lower rate than the shorter line distance. The rates I have shown are the present rates and the exhibit shows the distances and the routes over which the distances are made which determine the rate and you

can tell from the route whether it is a single line or joint line rate (Rec. 1834).

Exhibit 126-B shows the present rates on slag from Birmingham, Ala., to stations in Georgia on the Atlantic Coast Line Railroad, compared with the present rates on crushed stone from Lithonia, Ga., to the same destinations, and [fol. 517] what the rates from Lithonia, Ga., would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 126-B, Witness Crane".)

There are numerous instances where the present rates from Lithonia, Ga., are lower than they would be on basis of the docket 17517 scale.

Exhibit 127-B shows the present rates on slag from Birmingham, Ala. to stations in Georgia on the Georgia Railroad, and Atlanta & West Point Railroad, compared with rates on crushed stone from Lithonia, Ga., to the same destinations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 127-B; Witness Crane".)

On the first page of the exhibit, the present rates from Lithonia are lower than they would be on basis of the docket 17517 scale to Madison, Ga., Greensboro, Ga., Crawfordsville, Barnett and Browns, Ga., and on the second page of the exhibit all of the present rates from Lithonia, Ga., are less than they would be on basis of the docket 17517 scale (Rec. 1835).

Exhibit 128-B shows the present rates on crushed stone from Fascot, Tenn., to points in Georgia on the Southern Railway, compared with the present rates from Stockbridge, Ga., to the same stations, and what the rates from Stockbridge would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 128-B, Witness Crane.")

On pages 1, 2 and 3, there are numerous instances where the present rates from Stockbridge, Ga., are lower than [fol. 518] they would be on basis of the docket 17517 scale, and on the bottom of page 3, and in some instances on page

4, the present rates from Stockbridge, Ga., are higher than they would be on basis of the docket 17517 scale.

Exhibit 129-B shows the present rates from Mascot, Tenn. compared with the present rates from Lithonia, Ga. and what the rates from Lithonia, Ga., would be on basis of the docket 17517 scale, to points in Georgia on the Nashville, Chattanooga, & St. Louis Railway.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 129-B, Witness Crane") (Rec., 1836).

Crushed stone is produced at Mascot. Exhibit 130-B is a similar exhibit comparing the present rates from Mascot, Tenn. to points in Georgia on the Southern Railway, with the present rates from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on the basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 130-B, Witness Crane".)

Exhibit 131-B is a similar exhibit comparing the present rates from Mascot, Tenn. to points in Georgia on the Seaboard Air Line Railway, with the present rates from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Caariers' Exhibit No. 131-B, Witness Crane".)

Exhibit 132-B is a similar statement comparing the present rates on crushed stone from Mascot, Tenn. to points in Georgia on the Central of Georgia, with the present rates from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 [fol. 519] scale (Rec., 1837).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 132-B, Witness Crane".)

As to the interstate points like Mascot, Birmingham and the like to points in Georgia, I know, that there is a general movement from Birmingham into the state of Georgia, and I know that Mascot does ship to a number of stations in the state of Georgia. I don't know whether they would under-

take to ship to all of these stations, but contracts may develop at some of these stations, where they would like the opportunity of getting in there on these contracts. I know that they ship as far south as Macon, Ga. They ship to Atlanta, Ga. I understand the Birmingham people will testify respecting their own situation (Rec. 1838).

Exhibit 133-B is a comparison of the present rates on crushed stone from Mascot, Tenn. to points in Georgia on the Atlanta, Birmingham & Coast Railroad, with the present rates from Lithonia, Ga., and what the rates from Lithonia, Ga., would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 133-B, Witness Crane".)

Exhibit 134-B shows the present rates on crushed stone from Columbia, S. C. to points in the state of Georgia on the Southern Railway, compared with the present rates from Lithonia, Ga., to the same stations, and what the rates from Lithonia would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 134-B, Witness Crane.")

Exhibit 135-B is a similar exhibit comparing the rates [fol. 520] on crushed stone from Columbia, S. C., with the rates on crushed stone from Lithonia, Ga., to stations in Georgia on the Central of Georgia.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 135-B, Witness Crane") (Rec., 1839).

Exhibit 136-B is a similar exhibit comparing rates on crushed stone from Columbia S. C., with rates on crushed stone from Lithonia, Ga., to stations in Georgia on the Seaboard Air Line Railway.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 136-B, Witness Crane.")

The exhibits which I will now discuss compare the rates from Montgomery, Ala. with the rates from Junction City and Gaillard, Ga., to destinations in the state of Georgia.

Of course, the Southern Railway does not serve Montgomery, Ala., but I am merely making these comparisons

to complete the picture, and I thought it desirable to have a comparison of rates from these Georgia points with the rates from Montgomery to points in Georgia, because I have heard it said that with a joint line scale to much of the Georgia territory the rates from the Georgia points would become higher than from interstate points, and particularly Montgomery.

Exhibit 137-B shows the present rates on sand from Montgomery, Ala., to points on the Southern Railway, in Georgia, compared with the rates from Junction City, Ga., and what the rates from Junction City would be on basis of the docket 17517 scale (Rec. 1840).

(The same was thereupon received in evidence, marked [fol. 521] "Carriers' Exhibit No. 137-B, Witness Crane".)

Exhibit 138-B shows the present rates on sand from Montgomery to Georgia, Southern & Florida Railway stations in Georgia, with the present rates from Gaillard, Ga., to the same stations, and what the rates from Gaillard would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 138-B, Witness Crane.")

Exhibit 139-B shows the present rates on sand and gravel from Montgomery, Ala. to points on the Georgia, Southern & Florida, compared with the present rates from Junction City, Ga. to the same stations, and what the rates from Junction City would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 139-B, Witness Crane".)

Exhibit 140-B shows the present rates on sand and gravel from Montgomery, Ala., to points on the Georgia Railroad and the Atlanta, & West Point Railroad, compared with the present rates from Gaillard, Ga. to the same stations, and what the rates from Gaillard would be on basis of the docket 17517 scale (Rec. 1841).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 140-B, Witness Crane.")

Exhibit 141-B shows the present rates on sand and gravel from Montgomery, Ala., to points on the Atlantic Coast Line Railroad in Georgia, compared with the present rates from Gaillard, Ga. to the same stations and what the rates from Gaillard, Ga., would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 142-B, Witness Crane") (Rec.,

[fol. 522] Exhibit 142-B shows the present rates on sand and gravel, from Montgomery, Ala., to stations in Georgia on the Seaboard Air Line Railway, compared with the present rates from Gaillard, Ga., to the same stations, and what the rates from Gaillard would be on basis of the docket 17517 scale.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No 142-B, Witness Crane.") (Rec., 1842).

As to traffic which we originate in Georgia, or the traffic which comes from one of our short line connections, the Gainesville & Northwestern Railroad, that practically the entire movement is for hauls 200 miles and less. I tried to get figures as to the revenue effects of the establishment of the Georgia scale as compared with the interstate scale, but was unable to make any consolidated figures.

As to the traffic originated by the Southern Railway in Georgia, for the months of May, June, July and August, 1928, and including also shipments we received from the Gainesville & Northwestern Railway at Gainesville, Ga., the docket 17517 scale would produce revenue approximately $12,000 greater than the present Georgia scale. On an annual basis that would be approximately $36,000. Of course, that is only as to shipments which the Southern Railway originated, or which originated on the Gainesville & Northwestern Railway delivered to us at Gainesville, Ga. That computation covered 2342 cars. I can't say that the Southern Railway is the largest carrier of this commodity in Georgia. The Central of Georgia, and the Atlanta, Birmingham & Coast have a substantial movement in sand. Beyond that I can't say.

Of course, there were many movements on which there [fol. 523] would be no change in revenue whatever. For example, from Gaillard, Ga., to Atlanta, the docket 17517 scale and the Georgia scale produce the same rate, and there is a substantial movement there. I suppose that on the actual cars on which there would be an increase in revenue on basis of the docket 17517 scale, would be a great deal more than $5.00 per car (Rec., 1844).

Atlanta, Ga., November 27, 1928.

Before H. F. Waters, Examiner

Met pursuant to adjournment.

Appearances: Same as before. Following additional appearance filed: T. J. Burke, Charleston, S. C., appearing for the South Carolina Highway Commission.

In my exhibits showing rates on crushed stone, from Lithonia, Ga., while it is shown that the rate from Lithonia, Ga., to Atlanta, Ga., for a distance of 24 miles over the Georgia Railroad, the rate under the Georgia scale is the same as the rate under the interstate scale, that is not true of rates to points in the Atlanta district (Rec., 1846).

For example, it is six miles from Atlanta out to East Point, Ga., which would make a total distance of 30 miles from Lithonia, Ga. to East Point, Ga., and the Georgia scale would produce for that distance a rate of 60 cents, whereas the interstate scale would produce for that distance a rate of 75 cents.

Another station is Chattahoochee, Ga., where the distance from Atlanta is eight miles, making a total distance of 32 [fol. 524] miles, from Lithonia, Ga. to Chattahoochee, Ga., and the Georgia scale for that distance produces a rate of 70 cents, whereas the interstate scale produces a rate of 85 cents. No, the rates from Lithonia are not less than the Georgia scale. I said the rate from Lithonia, Ga. to Atlanta, on the Georgia scale was the same as the interstate scale, but that that is not true of rates from Lithonia, Ga., to points in the Atlanta district (Rec., 1847).

Cross-examination.

By Mr. Burchmore:

My exhibit 108-B and subsequent exhibits shows as tariff authority schedule known as Agent J. H. Glenn's I. C. C.

A-655 and Agent J. H. Glenn's I. C. A. A-529. Your understanding is correct that I. C. A. A-655 is the interstate tariff, under which interstate sand and gravel rates covered by my exhibits are generally found. When we talk about that tariff we refer to the one that contains most of the rates for interstate transportation we are discussing in this case. In some cases, the rates on sand, gravel, crushed stone and so forth in this tariff are published as specific point to point rates, while in other cases, the mileage scale as contained in the tariff determines the rate (Rec., 1848).

The tariff does of course contain a large number of point to point rates. If I wanted to know the rate from the point of origin to a destination interstate where there is a substantial movement, I should ordinarily expect to find a specific point to point rate in the tariff, and if I didn't I would then turn to the use of the scale. In preparing my exhibits I sought to use the specific rates where they were so published. If there is a typographical error or mistake [fol. 525] in computation in the tariff so that the rate from a station in Tennessee to a station in Georgia is a different figure than would be produced by the application of the scale for the correct distance, my exhibit should agree with the specific tariff rate rather than with the scale because that is what I intended it should show (Rec., 1849).

Q. Now do the rates as they are published in the tariff from Chattanooga, Mascot, Birmingham, and so forth, to stations in Georgia, apply under the routing instructions in the tariff, if any, over all of the routes used in your exhibits by which you have shown mileages?

A. I think that is generally true, although the traffic may not necessarily move over those routes. I have not checked to see whether the rate I have named in my exhibits is actually applicable under the tariff over the route by which I computed the mileage, but when we issued this interstate tariff, we were not able to work out routing instructions in connection with the rates. This has been true of many of these common tariffs published in recent years based on general scales described by the I. C. C. We are working on a general routing tariff, which it is hoped will ultimately apply in connection with all these general tariffs (Rec., 1850).

It is true that each of the defendant railroads has filed with the Georgia Commission and with the I. C. C. tariffs

naming the distances between points on their respective lines. There is not a schedule published that is available to the public as its schedule or tariff showing the distances for joint line hauls such as I have set forth in my exhibits, [fol. 526] but you can look in several tariffs and find it, but to do so it will be necessary for you to determine the junctions to be employed and add the separate factors, just as you would determine the lowest combination rate if you had no joint through rate (Rec., 1851).

In computing the distances used in my exhibits 108-B to 142-B for interstate movements I have not in all cases used the shortest routes over which carload traffic can be moved without transfer of lading. As I said yesterday, I have used the distance which makes the lowest rate, that is, the shortest joint line distance in connection with the joint line scale and the shortest single line distance in connection with the single line scale. And in computing the distance I have used the shortest route over which a carload traffic can be moved without transfer of lading.

Q. Now in determining whether particular hauls are single line or joint line, have you endeavored to regard carriers under common control or management as constituting one line?

A. The tariff provides for the application of the scale in that respect.

Q. You have endeavored to do that in your exhibit here?

A. I have followed the application of the scale as published in the interstate tariff.

Q. Yes, but a few minutes ago you said you sometimes disregarded the single line where the joint line would make the lower rate.

A. That does not go to the last question you were talking about (Rec., 1852).

[fol. 527] Q. Now, in your opinion as an officer and witness for the Southern Railway Company, I will ask you whether the Georgia, Southern & Florida Railway Company and the Southern Railway are carriers under common control or management, and therefore to be regarded as one line under the Commission's finding in 122 I. C. C. 166?

Mr. Walker: I object to that question.

Mr. Burchmore: This, if the Examiner please, is purely a question of fact as far as I am concerned.

Mr. Walker: You can ask him the fact and not his opinion.

Mr. Burchmore: I know the fact, but he is the witness to justify the rates.

The Commission says that in determining whether hauls are single line or joint lint, carriers under common control or management shall be regarded as one line. I ask the witness now whether he as a witness for the Southern Railway Company, and perhaps for other carriers, wishes the Commission to understand that the Southern Railway and the Georgia, Southern & Florida shall be regarded as one line within that term, or as two lines. May I have an answer?

Exam. Waters: He can state what has been done, and what the tariffs show as a matter of fact, but as to his opinion whether it ought to be or not, I don't know that he is qualified to answer that (Rec., 1853).

Mr. Burchmore: I would just as soon have the statement of the counsel for these two companies, as to what the conclusion of the two companies is, on that matter.

Mr. Walker: They are in the tariffs.

[fol. 528] Mr. Burchmore: That does not answer the question. It is a question of whether they come within the terms of that order of the Commission or not. I would like a statement as to these two companies, either from the witness or counsel.

Exam. Waters: I don't know whether the witness is qualified to answer whether they should be or not. He can tell you whether they are.

The Witness: I told you yesterday, or at least, I referred you yesterday to the finding of the Commission in the Livestock case, and stated that we had followed the finding of the Commission in the Live Stock case in applying the scale on sand, gravel and crushed stone.

Mr. Burchmore: Well, I desire to know whether the Southern Railway Company takes the position that its line with the Georgia, Southern & Florida, is or is not under common control or management and, therefore, to be regarded as one line within the terms of the Commission's findings in I. C. C. 122, page 166?

Mr. Walker: Well, the tariffs already provide for the application of the single line scale. As to my stating what should be done, I am not going to do it, because I don't

know. If there are any facts you want to ask about the operation of the Georgia, Southern & Florida, and the Southern Railway, I have no objection to your asking the question and Mr. Crane answering it, if he can (Rec., 1854).

Mr. Burchmore: Well, whether Mr. Crane knows or not I cannot say, but I ask that counsel for the Southern Railway shall state whether these two companies are under [fol. 529] common control and management.

Mr. Walker: I will have to refer you to the Interstate Commerce Commission for the answer to that question. They decide that, and not counsel.

Mr. Burchmore: Is it your position that they are or are not?

Mr. Walker: I do not know that that question is before the Commission here.

Mr. Burchmore: I ask that the Commission require a reply of the Southern Railway to that question.

Mr. Cotterill: Mr. Examiner, may I respectfully suggest that this is no time for that question, this is no time for the argument of this case.

Exam. Waters: I don't know how they are publishing the rate.

By Exam. Waters:

Q. How do you publish them, Mr. Crane, as two line hauls?

A. The interstate single line scale applies for interline movements between the Southern Railway and the Georgia, Southern & Florida.

Mr. Walker: I think that is all the Commission is interested in in this proceeding.

Exam. Waters: I don't see any use of pursuing it any further. If they have construed it wrong, the thing is to bring the question before the Commission.

Mr. Burchmore: I regard this as a very material fact in the case, but as the fact is refused I will get along without [fol. 530] it.

Mr. Walker: It is not a fact you are asking for, it is a conclusion.

Mr. Burchmore: Well, it is a fact whether they are under common control or not.

Exam. Waters: Well, if it is a fact, and it is disputed, it would have to be determined in the proper manner.

By Mr. Burchmore:

Where the long route in interstate traffic from Chattanooga, Mascot, Birmingham, and Montgomery as shown in my exhibits has met the rate of the shorter interstate route between the same points, it is not done by compulsion of any order of the I. C. C. that I know of (Rec., 1856).

A movement of material from Mascot, Tenn. to Mt. Pleasant, Ga., would be either a single line or a joint line movement over the Southern Railway from point of origin to destination. If the shipments were received by the Southern Railway at Mascot, Tenn. without any routing instructions from the shipper and destined for Mt. Pleasant, Georgia, it would probably move through Knoxville, Cleveland, Cohutta, Atlanta, and Macon.

I do not have in mind the relative distances over the route through the Carolinas compared with the route through Atlanta, and so can't say whether under ordinary practice the Southern would prefer the route I gave down through Knoxville to routing the car northward and eastward through the Asheville-Spartanburg route (Rec., 1857). I can't answer offhand whether the route I suggested through Atlanta is an easier operating route and preferred [fol. 531] under operating instructions to the other route I mentioned.

By Mr. Cotterill:

Q. Did the Interstate Commerce Commission consider the interstate revision effectuated by reason of the decisions in the Consolidated cases here referred to and deal with the extent to which the carriers would be authorized to depart from the terms of section 4?

A. They did.

Q. As to all deviations from the long and short haul ride, is it supposed by the carriers that they have received the sanction of the Interstate Commerce Commission as do so under the permissive clauses of section 4?

A. Yes, sir.

Mr. Burchmore: Mr. Examiner, may I on the record inquire of counsel for the Atlantic Coast Line Railway Company in this case, whether the position of that company as to the common control and management of the Charleston & Western Carolina Railroad, within the terms of the Commission's finding to which I have just called attention in my cross examination of Mr. Crane? (Rec., 1858.)

Mr. Gwathmey: I am not sure that I understand Mr. Burchmore's question, but in any even we would answer it in the same manner in which Mr. Walker answered the previous question. As to the manner in which the mileage scales are actually being applied on movements from points on the Atlantic Coast Line to points on the Charleston & Western Carolina, Mr. Doss can tell you when he goes on the stand (Rec., 1859).

[fol. 532] By Mr. Walker:

All that we ask is that the rates within Georgia be made on the basis of the interstate scale, giving to the application of the scale in Georgia, the same application in Georgia as it is on the interstate traffic.

(Witness excused.)

T. C. Maurer was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

At present I am Commerce Agent of the Seaboard Air Line, and have been connected with that road for the past ten years, and in its Commerce Department for the past four years, and have not previously testified in these proceedings (Rec., 1860).

The importance to the Seaboard Air Line of the sand and gravel and other traffic here involved is clearly illustrated by the following figures which I quote from statistics compiled by our Accounting Department. In the year 1925 the Seaboard Air Line Railway handled about 3,008,169 tons of these materials, approximating 16.8 per cent of the total tonnage.

In 1926 we handled 5,316,575 tons of 25.4 per cent of the total tonnage carried.

In 1927 we handled 5,213,183 tons of these materials or 25.5 per cent of our total tonnage. I am speaking of the System as whole, that, that is, originated and received and handled by the Seaboard Air Line.

In Georgia we have important producing plants at Ogles-
[fol. 533] by, near Elberton, Ga., and at Ladds, three miles south of Cartersville. There is also a plant located at Portland, Ga., which point is in the same vicinity as Ladds. These plants produce crushed stone.

From Columbus and Rockmart, Ga., we have record of some shipments of sand and gravel, and from Altamaha Sand Pit, Ga., south of Savannah, there have also been spasmodic movements of sand and gravel for some time (Rec., 1861).

Outside of Georgia within competing range we have access to the plants in the Birmingham district for slag, also the plants in the vicinity of Montgomery and Ragland, Ala., for gravel and sand. There are two plants located on the Seabord in South Carolina which should be able to ship into Georgia; one of these plants is at Columbia, S. C. and the other at Samlaw, S. C.

Before filing the exhibits showing the movements into Georgia, I would like to file as exhibit 143-B, a statement showing the rates on sand, gravel and crushed stone, and so forth, prescribed by the Interstate Commerce Commission in I. C. C. docket No. 17517, reported in 122 I. C. C. 133, applicable on interstate movements throughout the southeast.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 143-B, Witness Maurer".) (Rec., 1862.)

This statement also shows the rates prescribed by the Georgia Public Service Commission applicable on the same commodities intrastate in Georgia.

I offer as exhibit No. 144-B a statement showing the actual movements of slag, carload, from points in the Birmingham district to Georgia points.

[fol. 534] (The same was thereupon received in evidence, marked "Carriers' Exhibit No. 144-B, Witness Maurer".)

The shipments covered by this statement are those made during the first five months of 1928 for which period it will be seen that we handled 282 cars of slag for destinations in Georgia.

In connection with this exhibit I have shown the distances applying from the various origins to the various destinations and the revenue resulting from the movements. I have also shown the rates and revenues that would result from the application of the Georgia Commission scale for the same distances on the same number of tons.

On page 2 of this exhibit I have shown revenue based on the total number of shipments from each shipping point in the Birmingham district from which we handled slag.

The total revenue on basis of the present interstate rates is shown, also the total revenue on basis of the rates prescribed by the Georgia Commission (Rec., 1863).

In the last column the net result is indicated.

It will be seen that the application of the Georgia Commission's scale for similar hauls on a like amount of freight within the state of Georgia would entail a loss of $617.

Exhibit No. 145-B, which I will now file, is a statement showing the actual movements of sand and gravel, carload, from Alabama producing points to Georgia destinations for a six months period, ending June 30, 1928, the rates and revenues based on actual interstate rates compared with rates and revenues that would result from like hauls intrastate in Georgia based on rates fixed by the Georgia Public Service Commission, and which became effective May 1, [fol. 535] 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 145-B, Witness Maurer".)

This statement shows that the majority of the movement of sand and gravel from Alabama points is from Montgomery. There were shipped from this point during the period covered by this statement, 415 cars, for a total weight of 21.165 tons.

The total revenue from each of the shipping points is shown on page 2 of this statement, on which I have also shown the revenue based on rates prescribed by the Georgia Public Service Commission which would be applied for hauls of similar distances from the Georgia producing points to Georgia destinations (Rec. 1865).

It will be noted that the revenue resulting from the rates prescribed by the Georgia Commission would entail a reduction of $2,511.85, or 7.7 per cent of the revenue which we now receive for like service on interstate shipments.

I offer as exhibit 146-B, a statement showing the actual movement of crushed stone from Highway Spur (Oglesby) Ga., to Georgia destinations for a six months period ending June 30, 1928.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 146-B, Witness Maurer".)

The rates and revenues based on the present rates applicable from this point to points in Georgia are compared with the rates and revenue that would accrue from hauls of similar distances from interstate shipping points to Georgia destinations based on the rates prescribed by the Interstate Commerce Commission in I. C. C. Docket No. [fol. 536] 17517 (Rec., 1865).

If the same movement had been charged on the basis of the interstate scale the results would be as shown in the last column. This statement shows the movement from Highway Spur for both single and joint line hauls. The 499 cars shown in this statement produce a total of 25,499 tons, and based on the present rates, which are those prescribed by the Georgia Public Service Commission and which went into effect May 1, 1928, produce a total revenue of $21.573.

Q. What would have been the difference in revenue to the carriers if the interstate basis had applied on these shipments?

A. The difference would have been $8,012.65, or a percentage difference of 27.05 per cent.

Exhibit No. 147-B is a statement showing the actual movement of crushed stone from Highway Spur (Oglesby), Ga., to Georgia destinations for joint line movement.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 147-B, Witness Maurer.")

I have taken the figures used in this statement from my previous exhibit, therefore I will comment very briefly on the reduction in the revenue from joint haul.

For the total number of cars handled over two or more railroads the rates based on the Georgia Commission order

and at present applied within the state of Georgia produced revenue of $7,848 less than the revenue that would be produced on basis of docket 17517 joint line scale. The revenue produced under the Georgia intrastate rates is 71.32 per cent of that which would result from the appli- [fol. 537] cation of the interstate scale (Rec., 1866). These figures I have just given, indicate that to the extent of the movement shown in these exhibits, the greater loss so far as the Seaboard is concerned is occasioned in connection with the rates for joint haul application.

While the revenue from certain single line hauls is lower than that which the Interstate Commerce Commission prescribed in their docket 17517 scale, the greatest loss is on the application of one scale for both single and joint line hauls.

I have a consolidated statement showing the actual movements of the commodities here involved intrastate in Georgia for a representative period and ask leave to file it as Exhibit 148-B.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 148-B, Witness Maurer":) (Rec., 1867.)

This statement covers a four months period from the 1st of May until the last of August. The period represented in this statement is that for the four months immediately following the application or effective date of the Georgia intrastate rates.

The statement also shows the distance used in computing rates on basis of the Georgia Commission prescribed scale, the rates for the Georgia scale distances, and the revenue resulting from the rates as applied to the actual weight of the shipments.

I have for comparative purposes shown in this exhibit the distances used in computing rates in conjunction with the scale prescribed by the Interstate Commerce Commission and the rates and revenue resulting therefrom. From each individual origin sub-totals are shown, while on page 2 the grand totals are indicated.

[fol. 538] The net result of a comparison between the interstate versus the intrastate revenue illustrates clearly that on basis of the interstate rates as prescribed by the

Interstate Commerce Commission for application throughout the southeast and advocated by that body for intrastate application within the various southern states, including Georgia, would and should earn approximately $7,307.00 more revenue than the carriers receive under the present Georgia scale, and in earning this additional revenue they would not be receiving one cent more than the Interstate Commerce Commission found they were entitled to on interstate traffic involving the same haul and the same service (Rec., 1868).

This exhibit covers road building materials originated at producing points on the Seaboard Air Line.

Exhibit No. 149-B is a statement showing the present rates and revenue on actual movements of slag from Alabama producing points to Georgia destinations compared with rates and revenues resulting from the movement of a like number of tons of crushed stone from Ladds, Ga., for similar distances.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 148-B, Witness Maurer".)

In this exhibit I have shown the total number of tons shipped from the interstate producing points to each destination.

The revenue resulting therefrom is also shown.

In making my comparison with the rates from Ladds, Ga. I have based my figures on the total number of tons shipped for that distance. The rate applicable on basis of the Georgia Commission scale is shown and also the rev-
[fol. 539] enue resulting from the application of the Georgia rate for this distance to the total number of tons shipped from the interstate point (Rec., 1869).

It will be seen that in every instance the revenue which would be earned on basis of the docket 17517 scale is materially decreased by the application of the Georgia Commission scale. The intent of this exhibit was to indicate the manner in which the carriers lose revenue because of the diversion from what would otherwise be an interstate movement to an intrastate movement within the state of Georgia.

Exhibit No. 150-B is a statement similar to that filed as exhibit previously filed, with the exception that the move-

ment shown in this statement is the movement of sand and gravel from Montgomery, Ala., compared with crushed stone from Ladds, Ga., for similar distances.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 150-B, Witness Maurer.") (Rec., 1870).

While the movement from points on the Seaboard Air Line Railway in Georgia to points outside of the state of Georgia is not anything like as great as the movement from interstate points to Georgia points, I have knowledge of actual movements from Ladds, Ga., to points in Alabama, Mississippi and North Carolina.

I wish to file as exhibit No. 151-B a statement showing the points to which there were movements of crushed stone from Ladds for a six months period ending June 30, 1928. There were altogether 52 cars handled to these points during this period.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 151-B, Witness Maurer.")

[fol. 540] I have shown in this statement the rates and distances applicable from Ladds, Ga., to these interstate destinations. For comparative purposes, I have also shown the rates applicable on similar shipments from interstate producing points to Georgia points.

In exhibit No. 152-B, which I now file, I have shown the rates on roadway materials, carload, from Georgia points of production to points where road building is in progress in Georgia, compared with the rates applicable from interstate competing points for similar distance. It can readily be seen from this exhibit the disadvantage the interstate shipper has to surmount in order to bid on an even footing with the Georgia producer (Rec., 1871).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 152-B, Witness Maurer.")

In cases where the distances are practically the same as well as where the distances from Georgia points are somewhat in excess of the distances from the interstate points, it is clearly shown that the Georgia producer has a distinct advantage over his interstate competitor in the matter of freight rates.

While this statement shows only a few points at which roadway building is in effect in Georgia these points have been selected at random, and we have no reason to doubt that a similar showing would be made had we taken any points in Georgia at which construction work requiring the use of the commodities here involved is in progress. I should say that the information shown on this exhibit was worked up for the hearing last August or September which was cancelled (Rec., 1872). At that time we did have ac-
[fol. 541] tual knowledge that road building was in progress or contemplated.

(Witness excused.)

F. A. BURKE was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I am Commerce Agent for the Nashville, Chattanooga, and St. Louis Railway, and have previously testified in this case (Rec., 1873).

I have several exhibits dealing with this particular phase of the case which I desire to offer at this time.

My exhibit 153-B which is a map of the Nashville, Chattanooga & St. Louis Railway—I have shown the principal producing points of sand, gravel, and crushed stone on the Nashville, Chattanooga & St. Louis Railway south of Nashville, Tenn.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 153-B, Witness Burke.")

I want to call particular attention to the location of Chattanooga, Tenn., which is just north of the Georgia-Tennessee State line, and to the location of Graysville, Ga., a crushed stone producing point just south of the Tennessee-Georgia state line.

From Chattanooga into Georgia the interstate scale prescribed by the Commission in I. C. C. docket 17517 is applied.

From Georgia, on crushed stone, the Georgia Commission scale is applied.

There is no transportation condition on our line that [fol. 542] we know of that would justify the charging of lower rates, relatively lower rates from Georgia than from Chattanooga to Georgia destinations (Rec., 1874).

Previous witnesses have filed a statement showing a comparison of rates in cents per ton prescribed by the Interstate Commerce Commission and the Georgia Commission, so I won't duplicate their evidence, but I will offer as my exhibit No. 154-B a statement showing the differences in minimum per car revenue.

The minimum weight prescribed in connection with the interstate scale was 90 per cent of marked capacity of car. Within the state of Georgia the minimum was only 80,000 pounds, so on this exhibit I have taken two cars, first a capacity of 80,000 pounds, and the second of 100,000 pounds capacity, and have shown the differences that would result in the minimum car, using the two scales.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 154-B, Witness Burke.")

My exhibit 155-B shows the rates from Chattanooga, Tenn., to the principal common and junction points in Georgia, contrasted with the scale of the Georgia Commission for the same distance, that is if the Georgia Commission scale was applied from Chattanooga what the difference in the charges would be (Rec., 1875).

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 155-B, Witness Burke.")

On this exhibit I have shown the miles both by the short line and by the rate making route.

In my exhibit No. 156-B I have shown the rates from Cumberland, Ala. and Chattanooga, Tenn. to points in Georgia, to which there has been an actual movement of [fol. 543] crushed stone and sand and gravel, and I have compared that with the intrastate rates in Georgia both on a per ton basis and the minimum per car basis.

(The same was thereupon received in evidence, marked "Carriers' Exhibit No. 156-B, Witness Burke.")

(Witness excused.)

G. E. BOULINEAU was thereupon called as a witness and, being first duly sworn, testified as follows (Rec., 1876):

Direct examination.

By Mr. Gwathmey:

I am Freight Traffic Manager of the Georgia Railroad, Atlanta & West Point R. R. and the Western Railway of Alabama, and have not testified before in this case. I have some figures indicating the importance that my lines of the movement of sand, gravel, crushed stone, and other commodities covered by this investigation. Of these materials for the year 1927, the Georgia Railroad handled a total of 507,753 tons, which was 17.03 per cent of its total tonnage. Of that tonnage handled it originated 387,773 tons, or 76 per cent of the total of that kind of tonnage handled.

The Western Railway of Alabama handled in the year 1927 a total of 714,148 tons, which was 29.99 per cent of its total tonnage. Of this aggregate material which it transported it originated 657,601 tons, or 92 per cent.

The Atlanta & West Point Railroad Company transported during the year 1927 a total of 397,380 tons, which was 20.78 per cent of its total tonnage. It originated of aggregate material 1827 tons, or less than one half of one [fol. 544] per cent of this character of tonnage transported (Rec., 1877). The tonnage of the items covered by this investigation is an important element of the total business handled by my lines. The Georgia Railroad is located entirely in the State of Ga., and so is the Atlanta and West Point R. R. There is a very large tonnage moving interstate from the Montgomery district over the lines of the Western Railway of Alabama and the Atlanta & West Point R. R. I should say probably more than one-half of that handled by the Western Railway of Alabama moves in connection with the A. & W. P. R. R. (Rec., 1878).

I asked the auditor of the Georgia Railroad to prepare some data for me showing the difference in revenue on intrastate sand, gravel, crushed stone, rubble stone and screenings originated at points on the Georgia Railroad for the four months of May, June, July and August, 1928, the charges being assessed at the rates under the Georgia

Commission's basis, and comparatively, charges assessed on the interstate docket 17517 scale.

He gave me a statement showing the rate under the Georgia Commission's basis, and the charges on that basis, and the rate under the docket 17517 scale, and the charges on that basis, and the difference. Except for minor errors, the figures he gave me should be the same as the charges that were actually collected upon the actual movement. I am sure they are within a very small fraction of one per cent (Rec., 1879). For practical purposes he compared the actual charges.

The total tonnage so compared was 100,515½ tons. The revenue under the Georgia Commission's scale was $79,097.54. The total charges on the same tonnage, under the [fol. 545] docket 17517 scale, $89,048.17, or a difference of $9,948.63. However, that included some traffic going to Atlanta, and shown on this statement as destined to points in the Atlanta group which I know go to industries that are in the Atlanta switching limits and, therefore, I have deducted from that $800 in round numbers, making $9,132 net difference. That covers a period of four months, May to August, both inclusive, 1928 (Rec., 1880).

Cross-examination.

By Mr. Watkins:

In addition to the roads I have named for which I am Traffic Manager, I represent several small lines, the Elberton & Eastern, the Washington & Lincolnton, and so forth. Those railroads do not all have common officers; some of the officers are the same. The President of the A. & W. P. is also President of the Western R. R. of Alabama and General Manager of the Georgia R. R. Those roads are not operated altogether in common (Rec., 1881). A number of the officers are the same. The freight traffic department is joint, each road has a separate General Counsel and they have separate accounting heads. I am Freight Traffic Manager of all three lines.

By Mr. Burchmore:

I don't have the necessary information to give you the approximate tonnage of these materials which were hauled over our lines from Montgomery to Atlanta, during the

four months I have named. It was very large. The annual movement was perhaps distorted. I haven't the number of tons now, but during that particular period we han-
[fol. 546] dled a great deal of the viaduct material for Atlanta (Rec., 1882). Offhand I can't give you an idea of the approximate number of cars for those four months. I could get it for you.

Mr. Burchmore: We would like to have the number of cars or the number of tons, in whatever way is most convenient.

Mr. Gwathmey: Do I understand a request is made that the Examiner direct that that information be furnished?

Mr. Burchmore: I didn't ask that, I asked him if he would furnish it.

Mr. Gwathmey: Before the witness is asked to do that, I am a little dubious as to whether or not it is a proper thing for a railroad witness to do. We all know that there is a pretty strong competitive situation in this territory, and there are rather rigid limitations against disclosures by railroads of shippers' business.

The Witness: What I understood he desired, Mr. Gwathmey, is the tonnage moving over these lines for these four months, the total of this material.

Mr. Gwathmey: From Montgomery to Atlanta.

The Witness: I would prefer not to give one point to another.

Mr. Burchmore: My goodness, Mr. Examiner, they put in statements of specific numbers of cars from a given point to different definite destinations, they were as definite as you could make them, and they were not asked for by anybody (Rec., 1883).

Mr. Gwathmey: We take our chances on what we have [fol. 547] put in.

Exam. Waters: I don't see any objection to furnishing it if you see fit to do it. I don't know whether counsel wants to insist on it or not.

Mr. Burchmore: Yes, I insist on my request. If it is declined, I will have to deal with it accordingly.

Mr. Gwathmey: I suppose Mr. Burchmore will be willing to state the purpose of his request.

Mr. Burchmore: Not in view of your refusal. We desire to know the tonnage moving from Montgomery to Alabama for all purposes of the case.

Mr. Gwathmey: That does not answer the question, which was, that you state the purpose of the request. That does not answer my question. I want to know the relevancy of the question upon the issues in the case, and the reasons why the information is requested by counsel for the Georgia Commission, and what use he expects to make of it.

Exam. Waters: If you hesitate because you are talking about one point, why not give the total movement from these origins?

Mr. Watkins: Mr. Examiner, may I state another reason why that information is necessary and desirable? The witness has given the conditions which would result were the Georgia rate met by the interstate rate. Figures themselves without percentages mean nothing, it may be a nominal percentage (Rec. 1884).

Mr. Gwathmey: We have no objection, Mr. Examiner, I take it, to showing the total tonnage moving over the West-[fol. 548] ern Railway of Alabama and the Atlanta & West Point to points in Georgia, but when we are asked to select an individual point in Georgia and state the tonnage that moves to that particular point, I fail to see the relevancy of that to this issue.

Mr. Burchmore: The witness has given some figures purporting to show the effect upon these railroads of changes in rates. I desire to have the tonnage over these railroads that he testifies for from Montgomery to Atlanta in order that we may apply to those tonnages the various scales and the present rates, in order to determine what, if any, difference in revenue it would make, and how that compares with the alleged difference in revenue under the rates covered by the tonnages that he has volunteered; and, as to Mr. Gwathmey's objection, I desire to point out that voluntarily on no one's invitation, they have put into this evidence exhibits containing the precise number of cars from precise shipping points to precise destinations, and have used shipping points where only one producer was located, so that their little remark about unlawful disclosures seems to be a technicality, if I may say so (Rec. 1885).

Mr. Walker: What is the number of those exhibits, do you remember?

Mr. Burchmore: Yes, I have them before me.

Mr. Gwathmey: We don't need to waste time discussing that.

Exam. Waters: I don't see why you should pick out one point. If you take the whole of Georgia——

Mr. Burchmore: That is my request. Of course, if it is refused——

[fol. 549] Exam. Waters: For what period?

Mr. Burchmore: The four months mentioned.

The Witness: I object to furnishing specific point to point information, because I carefully refrained from doing that in this record.

By Exam. Waters:

Q. You mean even from Montgomery to all points in Georgia you would rather not?

A. I will furnish from all our shipping points, Montgomery district included, to all points in Georgia.

Q. You have furnished that, or you would be willing to furnish it?

A. I would be willing to furnish it.

Mr. Gwathmey: The very reason we refrained from filing an exhibit which Mr. Boulineau had prepared on this revenue question was that he had it worked up in such a way as to show individual movements to individual destinations, and we preferred not to show that information in this instance (Rec., 1886). Now, it is true that in some of the exhibits which the carriers have filed here some information if that sort has been shown, but I say that we have the right to decide for ourselves. If we want to take a chance on data of that sort, the fact that we file it in one instance does not make it obligatory on us to file it in another.

Exam. Waters: I am not compelling you, I cannot compel you, but I am asking if you are willing to furnish the whole movement from Montgomery to points in Georgia?

Mr. Gwathmey: That is not what they asked for, and I don't know whether that would answer their purpose or not.

[fol. 550] Exam. Waters: Does that satisfy you, Mr. Burchmore?

Mr. Burchmore: I haven't asked for anything excepting the movement from Montgomery to Atlanta over these

roads for which the witness testifies. If anybody offers anything else, I will state my position with reference to it when it is offered (Rec., 1887).

Exam. Waters: The carriers apparently do not want to furnish that. Is that so?

Mr. Gwathmey: Yes, we do not see the relevancy of it, and we don't care to furnish it.

Mr. Burchmore: Then I respectfully request the Examiner to direct them to furnish it.

Exam. Waters: The movement from Montgomery to Atlanta, is that it?

Mr. Burchmore: Yes, over the roads for which Mr. Boulineau is particularly testifying.

Exam. Waters: What is the purpose of it, Mr. Burchmore?

Mr. Burchmore: I have stated the purpose.

Exam. Waters: State it a little more plainly.

Mr. Burchmore: One of the purposes—and I will use it for any other purpose, if it is material and relevant—is to apply to that tonnage the present rates and the rates that would obtain under various scales in evidence in this case, to see the effect, if any, on the revenues of these roads of the application of this scale as against the present rates, and compare those differences with the testimony that he has given as to the alleged effect of certain other rates. The information might prove pertinent for other purposes. [fol. 551] I have not immediately in mind any other purpose, but if so, I would use it, and I ask that they be directed to furnish it for that purpose (Rec., 1888).

Exam. Waters: You have the difference today, don't you, between the rate from Montgomery that applies under the docket 17517 scale, and that which would apply in Georgia for an equal haul, haven's you?

Mr. Burchmore: I know everything that I need to know for the purpose of my inquiry, except the tonnage.

The Witness: I just happened to think, perhaps Mr. Burchmore has in mind the difference between the rate from Montgomery to Atlanta at present published, and the docket 17517 scale. If so, I can explain that.

Mr. Burchmore: I don't want any fact except the tonnage, and I don't care to argue my case now, and I do not ask the Examiner to require anything to be furnished that

the Examiner does not think material and relevant, but I ask an order from the bench requiring this to be furnished, because I think it is material and relevant.

Exam. Waters: I don't quite see how it is material to the decision of this issue. I suppose there is a heavy movement from Montgomery into Georgia, not only to Atlanta, but to all points. How does that help us to determine the issue of discrimination as between the docket 17517 scales and the present Georgia scale? We don't know—if they give the total movement into all these points it seems to me that would give you what you want. I don't feel that I should [fol. 552] attempt to here require picking out any point (Rec., 1889). If they want to give it all from Montgomery to Georgia, I think that would serve the purpose just as well, and if so, they have no objection to doing that.

Mr. Burchmore: It will not serve my purpose. I stand on my request, and I haven't any further facts to contribute to your assistance in ruling on it.

Mr. Watkins: Your Honor will understand that we are joining in Mr. Burchmore's request for this information.

Mr. Gwathmey: I call attention to the fact that the record does not yet show the purpose for which the information is asked.

Exam. Waters: I will not require them to furnish the shipments from Montgomery to the Atlanta district during this period. I do not see how it would add anything to the record under the issues here presented. They have stated their willingness to furnish the whole movement from Montgomery to all points in Georgia, and Mr. Burchmore, as I understand it, says that does not meet with the facts, so I think we might as well stop right where we are.

Mr. Burchmore: I have no further questions of Mr. Boulineau. I wish to note an exception to your ruling (Rec., 1890).

(Witness excused.)

Mr. Gwathmey: Mr. Examiner, I would like to recall Mr. Boulineau. Before interrogating him further, and in reference to the discussion which took place before the recess,

I want to say that the position of these defendants in respect to the information requested by counsel for the other [fol. 553] side is based upon the well known statutory provision which makes it a right as well as the duty of carriers to refrain from disclosing information with respect to the business of shippers.

G. E. Boulineau was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Gwathmey:

The present rate on gravel and sand from Montgomery to Atlanta, Ga., is $1.30 per ton. The docket 17517 scale for 176 miles, which is the distance from Montgomery to Atlanta via the Western of Alabama and the Atlanta & West Point (Rec., 1891), is $1.35; consequently the interstate rate from Montgomery to Atlanta is five cents less than the scale. When that rate was put into effect it was the scale rate, the distance being 175 miles from Montgomery to Atlanta, but on a recalculation of our distances it developed that the mileage was incorrect on both the Atlanta & West Point and the Western of Alabama, and the correct mileage is 176 miles, which would throw it into another group under the docket 17517 scale. We propose to change that rate to $1.35, which will put it on the scale.

Cross-examination.

By Mr. Burchmore:

The tariff making that change has not yet been published.

By Mr. Cotterill:

The official distance at the time from Montgomery to Atlanta, and the distance shown in the original proceeding upon which the I. C. C. constructed docket 17517 scale was 175 miles (Record, 1892).

[fol. 554] Yes, there was an enormous tonnage moving between those particular points then, as now (Rec., 1893). Some months ago certain recalculations were made respecting the distance between those points. The recalculation

was made in our engineering department under the supervision of our Chief Engineer. I told them what distances I wanted and the points I wanted to start and stop (Rec., 1894).

Mr. Cotterill: It is obvious to the counsel in the case on all sides, and has been from the time this affair arose in this supplemental condition, that the Georgia interests, both the official interests and the private interests, have contemplated and still do contemplate predicating a part of their theory of defense in the case upon the very thought that it cannot be said or held that there is undue prejudice as between interstate and intrastate shippers and communities, or for that matter unjust discrimination against interstate commerce under section 13, resulting from a difference between two particular mileage scales. Rather they will say necessarily that the practical question before the Commission, and maybe the courts, is as to the actual charges which are imposed. With that obvious predicate and foundation they then go on to say, of course, that if it be true that as to the interstate traffic, that to that extent at least, it is defensive to any argument or contention of fact and law, that failure to adhere to the scale on state traffic violates either section 3 or section 13. Now, I had supposed that perhaps it would be the choice of opposing counsel that the question would first be raised in terms by [fol. 555] them. My supposition is borne out by the announcement of counsel that one of the witnesses under his control had proposed going into the matter, and I had supposed that perhaps that was the time and place when the question would first arise (Rec., 1895). Now railroad counsel concluded that after the prior discussion as to the disclosure of certain tonnage, that the motive which the Government counsel had in view was to treat of this matter of departure from the interstate scale, and therefore, he recalled his witness to go into the matter to the extent which he did. That necessarily puts me for the time being in the position so far as this witness is concerned of taking advantage of his presence, and whether you call it further direct or cross examination, or not, as this is one of the important issues in the case, I should suppose I am entitled to carry it on to its final point of discussion so far as the

facts may lie with this witness. In view of the statement that the railroad considers that the charge is less than the authorized measure of interstate rates, and that they propose to file a tariff increasing that charge, to that extent, and for the present that puts the gentleman in the position of being adversary, and I should think that I am now engaged in cross examination (Rec., 1896).

We took a point on the track opposite the center of the freight station at Montgomery and so at every station along the line, and finally wound up in Atlanta at a point on the track opposite the center of the freight station. The mileage used by passenger trains was 175 miles. Passenger trains use a different track from the freight trains (Rec., 1898).

[fol. 556] By Mr. Burchmore:

Yes, the passenger fares are constructed on the same basis for single line passenger hauls or tickets as for joint line passenger hauls or tickets.

(Witness excused.)

Ben F. Morris was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

The Witness: I am Assistant to the Freight Traffic Manager of the Louisville & Nashville Railroad with headquarters at Louisville Ky. I testified in the prior hearing of this case in Atlanta and Asheville.

Our position is identical with the position of the major Georgia lines, and in view of our slight mileage in Georgia, we shall rely on the testimony submitted by witness Doss and other witnesses for the major lines, in the hope of avoiding cumulative testimony in this record (Rec., 1899).

I believe that you asked one of the witnesses yesterday the extent to which these scales had been employed in Kentucky and Tennessee. For the Louisville & Nashville Railroad we concluded to adopt the docket 17517 scale throughout car system from the Ohio River to the Gulf, and have made it effective in all of the states on state and interstate traffic, except Louisiana, Mississippi and Georgia. Peti-

tions are pending in Louisiana and Mississippi, and of course the Georgia situation is explained in this record. We made this choice at an estimated cost of from 200,000 [fol. 557] to 212,000 dollars per year loss in revenue over our system believing that uniformity in the rates was that desirable to our interest.

(Witness excused.)

Mr. Gwathmey: That constitutes all the testimony of carrier witnesses, but I would like at this time to call one additional shipper witness (Rec. 1900).

W. A. Todd was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gwathmey:

I reside at Augusta, Ga., and am engaged in the gravel business with my plant and shipping point at Steel Creek, S. C., located on the Charleston & Western Carolina, 30 miles east of Augusta, which means approximately 30 miles from the state line. We produce clay gravel for road work and sand gravel for railroad ballast (Rec., 1901).

Our approximate annual tonnage is from 60,000 to 100,000 tons and we have been operating at Steel Creek, since 1918 and prior to that time we operated at Loland, six miles toward Augusta, from Steel Creek. Up until April 1925, a large percentage of our products were shipped to points in Georgia. Since then we haven't shipped anything as our business is altogether into the Carolinas. We don't ship to Georgia now because the Georgia freight rate is against me (Rec., 1902). I mean the rate shippers located in Georgia have to pay is less than mine. When we did ship to Georgia it went generally to the Coastal territories as far down at Quitman, Ga. If the interstate rates from [fol. 558] my shipping point into Georgia were put on an equality with Georgia shippers, mile for mile, it would give me a good big territory, virtually my original territory and I should expect to ship a considerable tonnage then (Rec., 1903).

When this Georgia rate went into effect I had just spent $20,000 opening up additional deposits and for additional machinery and it stopped a fifteen car movement I was shipping on. I was advised by the engineer of the Highway Department to discontinue shipments, and that was April 1, 1925. I have bid continually since then but have not shipped any. We have to ship into Georgia over a joint line movement although the Atlantic Coast Line and Charleston and Western Carolina is a one line movement, but any other line is a joint line movement. Most of my tonnage now goes to Bufort County, Charleston County, Jasper County, Hampton and Allendale County, all in the coastal territory in South Carolina (Rec., 1904).

The average length of my hauls at the present time is between 125 to 150 miles.

(Witness excused.)

R. J. Doss was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Cross-examination.

By Mr. Burchmore:

Mr. Doss, can you state as a witness for and official of the Atlantic Coast Line Railroad Company, whether the Atlantic Coast Line Railroad and the Charleston & Western Carolina Railroad, are under common control of management, and to be regarded as one line, therefore? I am [fol. 559] using the language on page 166 of 122 I. C. C.

Mr. Gwathmey: The question is objected to (Rec., 1906).

Exam. Waters: You can ask him how the rates are published today, but I don't see that this witness is qualified to answer those questions. If he knows and wants to answer, he may do so, but if it is objected to I think I shall have to sustain the objection. Do you object?

Mr. Gwathmey: I do, in that form. Furthermore, I would like to know the purpose of it.

Mr. Burchmore: I desire to know the effect, if any, of the Commission's order in 122 I. C. C. 133, upon these two roads and their interstate transportation.

Mr. Gwathmey: We have no objection at all to giving the application of the rates, Mr. Examiner.

Mr. Burchmore: I dislike very much being put in the position of either having to appear unpleasant or of framing my questions to suit counsel. I framed my question the way I wanted it.

Exam. Waters: You ask him to give his opinion, as I understand it, whether it should be or should not be so operated.

Mr. Burchmore: That is not the question, it was diffently worded.

Mr. Gwathmey: The objection is that he asks the witness to state a conclusion of law, you might say, at least a conclusion instead of asking him to give the facts upon [fol. 560] which the Commission itself might draw its own conclusion (Rec., 1907).

Exam. Waters: I sustain the objection.

Mr. Burchmore: I note an exception.

Exam. Waters: You can ask him how they are published today in the tariffs, how the rates are published, whether joint line or single line. If you are asking him for an opinion, as I understood you are, whether it should or should not be so operated, I do not know that he is qualified to answer, and Mr. Gwathmey objects to the form of your question, so I will have to sustain the objection.

Mr. Burchmore: The objection is sustained to the question as asked, or in the form as restated?

Exam. Waters: You can ask it again.

By Mr. Burchmore:

Q. Are the Charleston & Western Carolina Railway Company and the Atlantic Coast Line Railroad Company carriers under common control or management?

Mr. Gwathmey: We object to that.

Exam. Waters: Objection sustained. There are joint through rates published and in effect from stations on the line of Charleston & Western Carolina in South Carolina, to stations on the Atlantic Coast Line in Georgia. They are intended to be the full measure of the docket 17517 scale socalled for joint line hauls of the distance between the points in question (Rec., 1908).

The only order under which we were required to revise or publish rates from Charleston & Western Carolina sand and gravel pits to Coast Line stations in South Georgia is the report and order in docket I. C. C. 17517, 122 I. C. C. 133.

Prior to that time we had through rates from these pits [fol. 561] to our South Georgia stations, and going back some years, those rates were published at so much per cubic yard, and they were upon a very low basis. We finally concluded to revise the rates, and we published tariffs carrying that revision. The rates that were then published were in most cases increases, and upon complaint those increases were sustained by the Interstate Commerce Commission and finally in 83 I. C. C. 436, the rates which we had then published or had theretofore published were approved and became effective. Now, the Commission's report in that proceeding very fully, as I recall, sets out the rates formerly in effect by the Charleston & Western Carolina and those then under discussion, and which were permitted to become effective. These are the rates which were in effect at the time of the order in Docket 17517 (Rec., 1909). Now, those rates that were then in effect, I mean prior to the order in docket 17517, and which were approved in the I. & S. proceeding to which I have just referred, were determined by using the carriers' proposed scale less 10 per cent, submitted to the Georgia Commission in 1921, under the circumstances which have been very fully described in this record, and we used the single line rather than the joint line scale for determining those figures. We did that not alone because of the connection between the Atlantic Coast Line and the Charleston & Western Carolina, but because we felt that that was as high as we could fairly go in that revision in view of the rates from competing points such as Montgomery and elsewhere on these materials.

Q. I think perhaps your answer indicates a misunder- [fol. 562] standing of the purpose of my question, and I am not sure that you have answered it definitely. I will reframe it, and assure you that I have no thought or suggestion that either of these railroads has at any time violated any section of the interstate commerce act, unless it be a violation of section 1, or any order of the Interstate

Commerce Commission in respect to this matter, and I want you to say whether once upon a time or formerly rates were published from Charleston & Western Carolina stations in South Carolina to the Atlantic Coast Line in Georgia on what you regarded as a single line basis, and now they are published on what you regard as a joint basis?

A. I have just said as carefully and as fully as I could that the rates which were in effect from Charleston & Western Carolina sand and gravel pits prior to the revision made in docket 17517, were determined using as a basis the single line scale which the carriers submitted to the Georgia Commission, but it was not applied literally. For one thing, we averaged the distance from the Charleston & Western Carolina pits, and published one rate from all pits. In other words, it was just sort of a level to which we were trying to bring these rates, they previously having been upon a very much lower basis. In that revision we were not bound by any order, and we were making very substantial increases in the rates, and that was just as far as we felt we could go under the circumstances.

I have not received any definite instructions from my superior officers as to the treatment of the two roads under [fol. 563] one management or control (Rec., 1911).

We understand and have always applied interstate from Charleston & Western Carolina points to Coast Line points the joint line scales where we were being required to revise the rates on a scale basis. When we came to apply the docket 17517 scale we had no hesitancy at all, and did not understand that we were supposed to do anything else other than apply the joint line scale from Charleston & Western Carolina to Coast Line points.

I know of no change in rates on or about May 1, 1928, from Charleston & Western Carolina stations to points in Georgia on these materials (Rec., 1912).

By Mr. Gwathmey:

There has been no change in the rate from Ellenton, S. C., to Savannah, Ga., so far as I know or can find since the rates were revised October 1, 1927 to comply with docket 17517.

I would like to be permitted to note some corrections on my exhibit 100-B. We have very carefully rechecked that exhibit and we find one or two errors which probably should be corrected.

On sheet 4, from Ellenton, S. C., the first station in the third group, the rate shown as $1.15 should be $1.05, and the docket 17517 rate in the next column should be $1.05.

On page 5, to Macon, from Pacolet, next to the last station, the docket 17517, rate in the second column of figures should be $1.70 instead of $1.60.

On sheet 9, Birmingham, Ala., the middle station in the second group, the 17517 rate should be $1.75 instead of $1.70.

On page 10, Montgomery, Ala., in the fourth group, the [fol. 564] rate should be $1.50 instead of $1.60 (Rec., 1913).

Sheet 13, to Albany, Ga., Montgomery, Ala., the distance should be S 164 instead of S 149.

I want to cut out sheet 14, because it is almost completely erroneous, in that the point is located on a short line, and we overlooked the arbitraries, so you can just cut that out entirely.

Mr. Burchmore: I don't think it should be cut out. It is a point which we think somewhat important. The rates are correctly set forth, are they not?

The Witness: I understand they are not.

Mr. Burchmore: But the docket 17517 rates are wrong?

The Witness: I can have it completely rechecked. I just noticed that they failed to add the short line arbitraries.

Exam. Waters: Do you want it corrected, Mr. Burchmore?

Mr. Burchmore: Of course, I don't want anything erroneous but I think page 14 is informative because it contains a long list of rates that are permitted under docket 17517.

Exam. Waters: You will correct it and resubmit it?

The Witness: Yes sir (Rec., 1914).

Sheet 20, Columbia, S. C., to Tifton, Ga., the first station in the third group, thed ocket 17517, rate for the distance shown is $1.75 instead of $1.70.

Sheet 29, Stillmore, Ga., from Ellenton, S. C., the rate and the docket 17517 rate should be $1.25 instead of $1.35.

On that same sheet, Dixiana, S. C., both the rate and the docket 17517 rate should be $1.40 instead of $1.45.

Sheet 32, Montgomery, Ala., about the middle of the [fol. 565] second group, the rate and the scale should be $1.60 instead of $1.70.

Sheet 36, Beverly, S. C., the first station, the rate should be $1.60 instead of $1.50.

Sheet 38, Columbia to Thomasville, Ga., the rate is $1.90 instead of $1.80.

Sheet 42, opposite Birmingham, the docket 17517 rate should be $1.40 instead of $1.30, and the distance should be corrected by cutting off the S indicating that it is a single line haul. It is a joint line haul (Rec., 1915).

Sheet 43, Montgomery, Ala., about midway of the page, the docket 17517 rate is shown as $1.30 and it should be $1.35.

Sheet 45, Montgomery, Ala., the first station in next to the last group, the distance is shown S 261 and should be S 315.

Sheet 46, Montgomery, Ala., the first station in the last group, the docket 17517 rate is $1.30 instead of $1.35.

Most of these changes represent just clerical errors in compiling the statement, and in compiling the tariff. Some of them represent errors in compiling the tariff.

By Mr. Burchmore:

Yes, my exhibits were made up by taking from the Glenn tariffs these specific interstate rates and showing them as the present rates on my exhibits where specific rates are published from point to point. They are so published wherever there was a known movement (Rec., 1916). In most cases on my exhibit the rates are published as specific point to point rates.

(Witness excused.)

[fol. 566] T. O. Maurer was thereupon recalled as a witness and being first duly sworn, testified further as follows:

Cross-examination.

By Mr. Burchmore:

My exhibit 144-B shows a distance of 222 miles from Ensley, Ala., to Gainesville, Ga., which distance was figured by

route 3 over the Southern Railway direct. The one car which I said the shipper at Ensley shipped to Gainesville, moved over the Seaboard Air Line in connection with our line (Rec., 1917). That route would be Seaboard Air Line through Rockmart and Atlanta and then across to Winder or Athens and from the latter point over to Gainesville Midland R.R. I can't say whether the distance would be substantially greater than 222 miles. Referring to the one car from Alabama City, Ala., to Blue Ridge, Ga., 199 miles, Route 11, Southern Railway, Western Atlantic and L. & N., is the short route but not necessarily the route for which the rate was made (Rec., 1918). I cannot say how the docket 17517 scale rate from Alabama City to Blue Ridge would be made nor over what route, using the shortest rail distance over which a car could move without transfer of lading, I would need the tariffs containing the rates before me. That one car did move over the Seaboard Air Line from Alabama City to Blue Ridge, and we would probably handle that through Atlanta. Without the tariff before me to check the mileage I cannot say whether the distance would be substantially more than 199 miles.

(Witness excused.) (Rec. 1919.)

[fol. 567] J. A. Streyer was thereupon called as a witness and being first duly sworn, testified as follows:

Direct examination:

Mr. Cotterill: If your Honor pleases, we would like to state an anticipatory objection. We are all personally tremendously devoted to the gentleman on the stand, but at the same time we have to avail ourselves of important objections. The witness has a disposition to embrace within his presentation things that are not testimony as to facts. I say that respectfully. I mean he is disposed to argue his case instead of waiting until the argument comes (Rec., 1922). By way of anticipatory objection right now, we take the position at this hearing that the parties who go under oath and occupy the witness stand must be confined strictly to testimony of facts. Anything that partakes of argument or statement of position, as counsel has another time and place.

Exam. Waters: I think that is a good rule to observe.

Mr. Burchmore: I want to say for the Public Service Commission of Georga that if Mr. Streyer does not cover certain matters that we think should be in this record, I shall ask that he be required to testify as a witness called by us in this proceeding now or later as you may designate. It is my purpose to call him as a witness if he does not go into these matters.

Exam. Waters: All right, go ahead.

The Witness: The original petition dated Washington, June 5, 1925, had the following names of railroads as petitioners, members of our association.

By Exam. Waters:

Q. That shows on its face?

A. Yes, sir. I desire at this time to withdraw them.

[fol. 568] Q. Who—are you going to name them?

A. Yes, sir. Green County Railroad——.

Mr. Cotterill: This is not testimony. He can withdraw them by written declaration to the Commission, in argument, on his brief, or any other way, but it is not testimony (Rec., 1924).

Exam. Waters. He is making a request now, I see no particular objection to that. It is the attitude that he wants to take at this time.

Mr. Cotterill: I am not objecting to his attitude. I am objecting to his using the position of a witness to go into something that is not testimony.

Exam. Waters: Well, it is a good time to get it in the record, I suppose.

The Witness: The Georgia Northern Railway, Flint River & Northeastern Railroad; Georgia, Ashburn, Sylvester, & Camilla Railway.

Now Mr. Examiner, those railroads were in the original petition. There are some others that are left there that are in favor of these proceedings, but as all railroads within the state of Georgia were put into this proceeding, 22 of those railroads are here supporting the Georgia scale, that is primarily supporting a single line scale, for the reason that——

Mr. Cotterill: If your Honor please, I now object on the ground that there is no such issue before the Interstate Commerce Commission, and what the witness is saying is wholly irrelevant to any matter in issue, and if there is any [fol. 569] disposition to doubt that, I would like the privilege of argument, and perhaps extended argument (Rec., 1924).

Mr. Burchmore: May I reply, if there is any technical question of its materiality I ask that it be waived, and that in fairness the witness be permitted to answer.

Mr. Cotterill: There is no rule of fairness other than the rule of law as to evidence. That is fundamental in this case. If there is a disposition to assert in this proceeding that the matter the witness wants to go into is relevant and germane, we might as well face it now. It has to be faced sometime. It is our deliberate intention to urge your Honor to rule the exclusion of that evidence or anything like that.

Mr. Burchmore: It if is an important question in the case I question how it can be immaterial. I think it is an important question in the case, and, therefore, I was responding to Mr. Cotterill's objection.

Mr. Walker: I join in the objection to that. The question here is whether these rates are discriminatory, and not whether one party supports one scale or another scale.

Exam. Waters: I am going to rule on this. Do you want to make an argument before the ruling?

Mr. Cotterill: May I consult with another counsel?

Mr. Burchmore: You asked be to be brief, and I am going to be darned brief from now on.

Exam. Waters: I asked you all to be as brief as possible in your argument. If you take that personally you are very much mistaken. I addressed it to all of you (Rec., 1925).

[fol. 570] Mr. Cotterill: At this point, your Honor, we do not care to add anything.

Exam. Waters: I will permit the witness to go ahead.

The Witness: Those 22 railroads are supporting a scale for single line and joint line application.

Mr. Walker: Both inter and intrastate?

A. Yes, sir.

Mr. Walker: I object to testimony of this character. That question is certainly not before the Commission here.

Mr. Gwathmey: I join in that objection and call attention to the language of the order reopening the proceeding, which is very specific.

Mr. Watkins: The gentlemen will notice that interstate came in there by the question of Mr. Walker.

The Witness: All right, I will eliminate interstate and put it intrastate, for the reason that the short-lines have little or no local territory, and that practically all of their business moves as joint traffic, and they are required to carry differentials higher than the single line scales when they have very little if any traffic moving single line, and they are in competition with traffic moving over single lines for single line haul. Now, that is my reason for withdrawing them, and we are here saying that we do not believe there is any real discrimination as between the rates on these carriers—— (Rec., 1926).

Mr. Cotterill: I object, Mr. Examiner, on the ground that the witness is simply stating a bald conclusion.

Exam. Waters: Let him go ahead.

[fol. 571] The Witness: All right—as between rates as prescribed by the Georgia Commission for application by these carriers as against the interstate rates.

Exam. Waters: Is there any cross examination?

Mr. Cotterill: Your Honor, without wishing at this time to argue it, but to maintain a position of consistency, and the argument will come at another stage of the case, I respectfully move to strike the explanation that the witness has given, and will leave it undiscussed for the present. Later on in connection with objections that will arise to certain other testimony, I will renew the motion to strike, and then will engage in argument on it.

Exam. Waters: The objection is noted.

Mr. Gwathmey: We would like to ask a question.

Cross-examination.

By Mr. Gwathmey:

Q. Mr. Streyer, did you receive specific authority from each and every short line which you have named, to withdraw them from this proceeding?

A. I did, and may I add the reason why?

Q. You certainly may as far as I am concerned (Rec., 1927).

A. For the reason that they found that on joint line traffic they lost tonnage on account of cross country competition and otherwise. We have made an effort to get some of the Trunk Lines on special movements on interstate traffic to join in single line scale business in competition with pits or industries located in approximately the same territory, the same distance, and sometimes the distance was shorter from the short line point of origin to desti- [fol. 572] nation than from an origin upon the Trunk Line where the single line haul was involved. That is our reason.

I might further add to this, Mr. Gwathmey, it was not permission, I got the instructions to withdraw. If conditions and the location of a short line are such that we can apply the differentials, we do, within our discretion. We have recently taken the arbitrary off of two railroads on account of not being able to carry the arbitrary and compete with the Trunk Line across country. On some of the short lines today on intrastate traffic we do apply the arbitrary (Rec., 1928). Some traffic is moving under rates which take the arbitrary. It is also true that with some of our interstate traffic the arbitrary is added from points on a short line to interstate destinations, but we have instances where the interstate traffic has fallen off on one short line; where the total tonnage of sand and gravel since these rates became effective have fallen off 80 per cent from the short line, but not within this state. We are applying the joint line scale on such traffic. I would not say that we are generally applying the interstate arbitrary, because most of the important lines within Georgia and North Carolina, and South Carolina, have taken off the arbitrary because of competition. They could not carry it (Rec., 1929).

In the last two weeks on the Wadleigh Southern and the Wrightsville and Tennille Railroad we took the arbitrary off on traffic moving to a point on a short line. Those are not rare occasions. In Georgia there are 7 out of 22 rail- [fol. 573] roads that don't carry the arbitrary in Georgia to destinations. Yes, sir, I am talking about the Georgia arbitrary or the interstate arbitrary. We take off both. In the case of a local interstate shipment where competi-

tion is not involved, we carry the single line scale interstate as prescribed by the Commission without the arbitrary. When we have a competitive reason to do so we have taken this arbitrary off a great deal (Rec., 1930). When we do not have those competitive reasons if we take it off of a short line, we take it off to be consistent, both single and joint line, interstate. In other words, we do not feel we could be in very good graces of the Commission by removing it from joint line traffic and charging the man that has a single line haul an arbitrary. If we remove it from a railroad it is removed entirely, both intra and interstate.

It is true that on a short line railroad I represent here, that in Georgia and South Carolina they are charging on sand, gravel and crushed stone in connection with the Trunk Lines they join rates that do not contain the 25 cent arbitrary referred to in the docket 17517 decision. I didn't say that that applied to Alabama. I am not sure of that but in North and South Carolina and Georgia it is true.

Mr. Cotterill: If your Honor please, I again renew the motion to strike out the testimony, and will argue it later. Subject to that motion I would like to indulge in a brief examination of the witness (Rec. 1931).

By Mr. Watkins:

I don't think any of the short lines meet the truck or [fol. 574] wagon competition at any points on these commodities. Yes we now have some cross country competition, at Oakfield, Ga., on the Georgia and Florida R. R., we have it to Lyons, where he can get the benefit of the single line mileage scale on gravel from Mitylene, Ala. Ordinarily we would get that movement. We are right in the center of the work being done, and only by making certain inducements we did get it.

By Mr. Cotterill:

Yes, there are five railroads on behalf of whom I took exactly an opposite position (Rec. 1932).

The Macon, Dublin & Savannah Railroad, and the Savannah and Statesboro Railroad, are in favor of joint line rates, because their vice president has always been and is

today absolutely opposed to one scale of rates applying both joint and single line.

As to the Elberton & Eastern, I presume—they have not given me the reasons, so I cannot presume.

As to the Washington & Lincolnton Railroad, the management I presume is the same as the Elberton & Eastern.

The Tallulah Falls Railroad, I have received no instructions from them to withdraw them. I don't know of any reason why they are not in favor of the joint line scale.

The Chattahoochee Valley Railroad has one mile in Georgia.

As to the Tallulah Falls Railroad, I should think that either a single or joint line scale—in fact if I was representing that road, it makes very little difference, as they have no cross country competition, and have a territory [fol. 575]-all by themselves.

I am saying this to the Commission that we favor the single line scale and by "we" I mean the 22 line-(Rec. 1934). I am not asking the lines I represent to treat differently interstate and intrastate rate commerce respecting the charging or not charging a joint line scale, and there are 24 railroads that do not allege that the difference between Georgia and the interstate rates are a violation of law. I am not trying to justify at all, and am simply stating to the Commission the position of those lines. I don't know of an actual movement to or from any of these railroads, and unless there is a movement there cannot be undue prejudice (Rec. 1935). I mean of course, that there is nothing moving on those rates from those railroads. There has been intrastate traffic but not interstate traffic. I am aware of no interstate movement of sand and gravel from Montgomery, Ala. to any short line in Ga. represented by me in this proceeding. My sources of information is general of course. I haven't a recent record of it, but I did have several months ago.

Q. If it be assumed that an unequal treatment of inter and intrastate commerce is the reason why there is no interstate movement, do you or do you not undertake to defend that difference in treatment?

Mr. Watkins: I object, if your Honor please, to any such assumption, as there is no evidence to sustain that assumption.

Exam. Waters: Read the question, please.

(Question as above recorded, was repeated by the reporter) (Rec. 1936).

[fol. 576] Exam. Waters: I see no objection to the question.

Mr. Burchmore: Will you pass on the objection, Mr. Examiner?

Exam. Waters: I will let him answer. Is there any exception?

Mr. Watkins: Yes. I did not know an exception in this court was necessary, but I except every time you rule against me.

Exam. Waters: It is not neccessary, perhaps.

The Witness: Assuming that there was a movement?

By Mr. Cotterill:

Q. The question was just exactly the opposite. The question was, assuming that the reason why there was no movement was the difference in treatment of interstate and intrastate commerce, do you or do you not in that event undertake to justify the discrimination?

A. Well, I don't know, Mr. Cotterill. My frank opinion is that there is very little discrimination between the two. As to the Georgia rates there is not enough difference to control very much of the business when it comes to actual interstate and intrastate and when I speak of the difference I mean the difference between 17517 single line scale and the Georgia Commission single line scale (Rec., 1937).

I have named the lines I represent and have stated in the record those that favor the joint line traffic. Personally I am in favor of one scale of rates so I am not seeking to justify that.

Q. I am asking you, do you or do you not undertake in [fol. 577] the case of any railroad which you here represent to justify the charging by it of the docket 17517 joint line scale on interstate traffic, and contemporaneously charging the Georgia scale on state traffic?

A. Why, sure I was doing that, for the reason that I have got to do it under the law. I have got to charge the docket 17517 scale on interstate traffic, and on intrastate traffic I have got to charge the scale of the Georgia Commission (Record, 1938).

By Mr. Burchmore:

Mr. C. R. Catts is Vice-President of the Macon, Dublin, & Savannah, R. R. and he is also Vice-President and Traffic Executive of the Seaboard Air Line, as well as Vice-President of the Savannah & Statesboro R. R., one of our short lines (Rec., 1939).

My position is exactly as you state. I tried to make that plain at the start, and that the discrimination against the short line railroad is based upon the fact that the application of the joint line scale from points on the short line will curtail the movement of these commodities from that point, and not that the two scales will result in undue discrimination. The short lines in Georgia upon which crushed stone originates are the Gainesville and Northwestern R. R.; the Georgia & Florida, R. R., and the Macon, Dublin & Savannah have a limited amount of sand and gravel, as also due one or two of the South Georgia lines, and of the total number of lines, I represent about five of them originate these commodities in Georgia.

By Mr. Webster:

I should say that all of the lines terminate these com- [fol. 578] modities, and by that I mean there are a good many shipments destined to points on those lines (Rec., 1940). Very little of it, if any, is handled in connection with through traffic in passing over their rails.

By Mr. Gwathmey:

I will repeat which of those five lines are the ones I have withdrawn from the petition; I withdrew the Georgia & Florida, and have authority from them, a letter on file; I didn't name the Georgia and Florida in the original petition. By petition you mean withdrawn from the case. All right, the Georgia & Florida was withdrawn from the second petition; it originates tonnage of sand, gravel, and crushed stone (Rec., 1941). The Gainesville & Northwestern is another one. It originates tonnage. The Wrightsville and Temmille was withdrawn; it operates a sand pit and ships an occasional car; the Sherwood R. R. ships an occasional car and was withdrawn.

By Exam. Waters:

Q. When you speak of withdrawing from the petition, do you mean the recent petition, which brought about this

hearing and because you put all the railroads in it. There are 22 withdrawing, and I have not named those. I have named those that were sticking and all the rest are out (Rec., 1942).

By Mr. Gwathmey:

Yes, some of these commodities originate on the short lines for which I have not attempted to withdraw the petition, and I said the Macon, Dublin & Savannah was one with a limited amount. There aren't any others. Yes, it [fol. 579] is my position that the joint line differential as well as the arbitrary, should be eliminated from the rates on sand and gravel destined to all points on the short lines in Georgia. I say one scale of rates should apply over all lines for both single and joint line application; as to the short lines, that they be allowed the arbitrary as has been customary, both on interstate and intrastate traffic. We want the arbitrary if we care to take it, and the privilege of abandoning it if we like. And where we abandon the arbitrary we don't expect the Trunk Lines to make up the losses in division; it does not affect their revenue in the slightest (Rec., 1943).

By Exam. Waters:

Certainly I still believe in the theory of arbitraries for special treatment but I don't believe in differentials between the joint and the single line scales. I should say that of the traffic on which we are abandoning the arbitrary today after it is authorized is about 80 per cent on this sand and gravel (Rec., 1944).

Exactly, under the decision in docket 17517 our short or weak lines should be permitted if they chose to take advantage of it and add to the scale rates an arbitrary of 25 cents per ton and we would like to be allowed to continue to take it or not to take it as we choose, interstate as well as intrastate. Since we removed the arbitrary from the last two railroads, the Wrightsville and Tennille and the Wadleigh Southern, I think 80 per cent of the traffic in those commodities in Georgia on the short lines moves without the arbitrary (Record, 1945).

[fol. 580] Not a pound of traffic in these commodities originates in the two roads last mentioned except for an

occasional car over the Wrightsville & Tennille. My estimate of 80 per cent is based on my full knowledge of the roads, the traffic they handle, and that the bulk of the traffic of sand and gravel is moving to those lines that do not carry the arbitrary. Most of these commodities originate in Georgia on the Georgia & Florida and the Gainesville & Northwestern (Rec., 1946).

Intrastate traffic from points on the Gainesville and Northwestern takes the arbitrary today. I think 60 per cent of the tonnage in Georgia originates on the Gainesville and Northwestern and we apply the arbit-ary on that, and I might add that there is a difference in the class of stone. I think very little sand and gravel originates on the Gainesville & Northwestern (Rec., 1947).

(Witness excused.)

J. H. Brown was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I have been in the sand business for twenty years, residing at Howard, Georgia, and shipped from Junction City to Atlanta. Howard is four miles from Junction City (Rec., 1948).

I am not familiar with the subject but think the rates from Howard, Junction City, and Gaillard have been [fol. 581] grouped generally. From time to time the rates have been increased. We have two grades of sand selling one at 15 cents a ton and the other at 35 cents, with our principal market at Atlanta, shipping probably 80 per cent there. Our principal competition in Atlanta comes from Gaillard and Roberta, down the Southern Railway route. I don't think our margin of profit would permit additional charges on transportation. I think it would put me out of business (Rec., 1949).

Q. Are you in favor of the single line rate in Georgia that is now in force?

Mr. Cotterill: If your Honor please, I must respectfully object, and in that connection it will be recalled that as to

the preceding witness it was decided by counsel not to ask you then to entertain argument on the question, but we seem to have reached the point where it might just as well be approached and gone into as fully as it requires either on or off the record.

Exam. Waters: Well, I guess if it is going to be argument, we had better have it on the record.

Mr. Watkins: I don't care anything about arguing it. I think it is a competent question, and I am insisting on it, and am ready to have the Examiner rule on it.

Mr. Cotterill: The question is one that does require a ruling, and we might as well reach it now. It controls the future of the case anyhow.

Exam. Waters: My point is whether either side would care to argue it.

[fol. 582] Mr. Cotterill: I would like to.

Mr. Watkins: I don't care to argue it. It seems to me the best way would be to put it in and let the argument come later.

Mr. Walker: It seems to me, Mr. Examiner, whether he is in favor of a single line or joint line scale is immaterial in this case (Rec., 1950).

Mr. Burchmore: I do not desire to argue, but I would like to have the objection stated. It may have been stated and I didn't hear it.

Exam. Waters: It has not been stated.

Mr. Cotterill: If your Honor please, it will be recalled as indicated in the opening announcement, that this is a proceeding which has been under way for some length of time, and as to which the Commission has reopened the record to receive additional facts. I will not speak at length on the matters which have thus far been decided, and with apparent finality, other than to say that subject, I presume, to any corrective evidence which might cause the Commission to change its conclusion, it has thus far been decided what is the proper standard of charge to which rates shall be made to conform.

In addition to that, it has been decided that there are substantially similar circumstances and conditions within the scope of section 3 of the act as between state and interstate traffic in Georgia.

[fol. 583] Now, this Commission for reasons not necessary to go into, has reopened the proceedings, but in that con-

nection it was very particular, in the order assigning the cases for rehearing, to warn everybody that it was doing so solely with respect to the question of the violation of sections 3 and 13 (Rec., 1951).

Secondly, at the opening of the case, counsel for opposing interests accepted your construction of the hearing by their declaration that they would rely upon a jurisdictional contention, that as thus limited the Commission was without power to make a valid order.

Thirdly——

Mr. Watkins: Permit me to interrupt you. I want to disclaim that I limited my claim to non-jurisdiction.

Mr. Cotteril: Oh, I know you did not. I think it was apparent that there were perhaps additional elements of law involved in the conclusion of you gentlemen. At any rate, the counsel for the Public Service Commission used these words, he said that as limited by the Commission. He took the position that the Commission would be without power to make a valid order.

Thirdly, it would be, I venture to say, overwhelming in its immediate practical commercial consequences if the Commission should take any different position than it has with respect to the scope of this hearing. There is no pro- [fol. 584] ceeding now before the Commission dealing with interstate rates as such, it is not as if the cases in their entirety had been reopened.

Counsel for some of the parties here, the distinguished Mr. Watkins, has previously presented to the Commission a formal petition seeking from the Commission an opportunity (Rec., 1952) to reopen the cases in their entirety to sufficiently serve to enable re-examination of the question whether there should or should not be a difference between single and joint line rates, and the Commission denied that request. Every other party to the case has been quite naturally put in a position where it never once occurred to them as remotely possible that in this late day would it now be attempted to go outside of the scope of the cases as defined by the case, as defined by the Commission assigning it for further hearing, as defined by the Commission in their attitude in declining to open it for general examination; and I most respectfully say to your Honor that for the Commission now to permit evidence on that question would be simply to reverse the entire record that appar-

ently so far has been made as controlling the scope of this hearing. Certainly my clients never supposed that there was any pending case in which they would be called upon to justify the conclusions already reached by the Commission. The only questions here is, are sections 3 and 13 being violated as a result of the differences between the [fol. 585] rates that are being charged in Georgia and those that are being charged on interstate traffic (Rec., 1953).

Mr. Gwathmey: Mr. Examiner, I merely desire to interpose the same objection on behalf of the lines that I represent. I do not think it is necessary for me to repeat the reasons, but I do want to call particular attention to the language of the order of June 4, 1928 reopening this proceeding. The point is that this hearing is not the time the proper time, as I see it, to discuss these questions. They can only properly come up in the event that the Commission should reopen docket 17517 in its entirety, and upon the general question as to what interstate scale or scales would be proper for the future.

Mr. Burchmore: Mr. Examiner, I have no argument to make, I simply wanted to remark that Mr. Cotterill has incorrectly stated my position and my views, and I do not wish to be understood as concurring in anything that he said from beginning to end. I reserve the right to concur in any part of it that upon inspection appears to be right; but I want to ask if he can state in one or two words what is the objection to the question, not an argument of it, but what is the objection to the question? Is it that it is leading or immaterial, or irrelevant or incompetent, or what?

Mr. Cotterill: However, to meet the objection that we must state our ground of objection, I will say that the argument I have made is in support of (Rec., 1954) the objection that the question is immaterial to any question now [fol. 586] before the Commission.

Exam. Waters: As the question stands, I see no objection to it.

Mr. Cotterill: I am sure your Honor appreciates the point of the argument at least. If your ruling on it goes only to the point that the argument is not appropriate to the particular question, I venture to respectfully say that I did not discuss that in my argument, because I took it for granted in my own mind that the question meant this: Does

the witness favor the avoidance of a difference between single and joint line rates on this commodity? Assuming that the question meant that, and nothing else, it goes to a matter not involved in the proceeding, because whether he favors it or not is not something here under inquiry. Suppose he does not favor it, suppose he does favor it, we say there is nothing to be decided in this case responsive to that evidence. It reopens a question that is not now assigned for hearing.

Exam. Waters: I am inclined to agree with the contention of Mr. Cotterill, interpreting the order strictly. On the (Rec., 1955) other hand—and you gentlemen will of course have the right to take exception to my ruling, I am going to let this evidence in, not that I believe that the Commission could act upon this evidence without going further into the matter, if it was so inclined, have another hearing if it became necessary. I certainly do not think that under this order we can here undertake any more than the order [fol. 587] sets forth. But, for what consideration the Commission may want to give to it in other connections, if it should want to, I will let it in for the purposes of the record as I have tried to point out, not in this proceeding as it now stands for hearing.

Mr. Gwathmey: I would like to go on record in view of that ruling to the effect that the carriers have not been put on notice that they are expected here to go into that question as to what is or is not a reasonable scale.

Exam. Waters: I realize that.

Mr. Gwathmey: We are not prepared to go into that, I think it is entirely outside of the hearing.

Exam. Waters: I have tried to say here that I do not think the commission is going to go into it. I do not mean by that that the Commission might not want to be advised as to facts, they like to get at facts.

Mr. Cotterill: If your Honor please, there are millions of dollars in this controversy. You are trying a lawsuit. (Rec., 1956.) We are not in the position of being in this hearing to advise the Commission about matters not on trial. We respectfully say, Mr. Examiner, that if you have the authority to make a ruling, counsel here who have been applying themselves to the scope of the hearing, and have prepared their case with the knowledge before them of

what the scope of this proceeding is, must respectfully [fol. 588] urge your Honor that you take the responsibility of deciding now that that evidence is inadmissible. Now, if the Commission want to hold an Ex Parte hearing here, or at any other time, to receive some evidence not germane to the case on trial, that is something we will deal with when we come to it, but it is most unfair, wholly apart from legal objections, to say that after agreeing that this evidence is inadmissible in the case on trial, that nevertheless you will receive it, for other purposes, with no warning, no opportunity to consider such a situation, and not prepared to deal with it; therefore, it cannot be of aid to the Commission in deciding the question on trial. Counsel have had their opportunity. The motion presented to the Commission they endeavored to support with all the force at their command, and appealed to reopen that question, and they were denied. Now, why should we take the time, and have my clients subjected to the necessity of participating in a case when obviously the testimony is (Rec., 1957) not directed to an issue on trial?

Exam. Waters: I say I am inclined to think perhaps it is not strictly in the reopening of the case, yet the case reads as being reopened.

Mr. Cotterill: If your Honor please, the order says solely on the question of discrimination.

[fol. 589] Exam. Waters: Some of the gentlemen here I understand take the position that it is a new case altogether, so we have certainly a very decided line of difference between the contentions of the different parties.

Mr. Burchmore: Mr. Examiner, my objections have not been stated. I am not subscribing to these contentions that have been ascribed to me.

Exam. Waters: I will watch these questions, however, as they proceed. I am not making any general ruling right now. I am not inclined to say that I am going to rule out every question just because it may be on the border line or open to discussion, or whether it is actually admissible or not under these pleadings. In other words, I am not going to try to draw any nice distinction here. As far as the question that was asked just now is concerned, I said that he could answer it.

Mr. Burchmore: Mr. Examiner, may I make a very short statement for the Georgia Public Service Commission as a party to this proceeding? That Commission has issued (Rec., 1958) an order dealing with the rates on sand, gravel, crushed stone, and so forth, within the state of Georgia. My position as its counsel in this proceeding is the same position which the Interstate Commerce Commission takes in a federal court, where a bill is brought to set aside an order of the Interstate Commerce Commission, namely, I [fol. 590] am here to protect the integrity of the order entered by the Georgia Commission, and that is probably the entire extent of my appearance. Now, the proceeding is being heard under certain pleadings. You made a definition beginning with the hearing yesterday as to the issues. When I hear evidence that appears to me immaterial or irrelevant, I should like to object to it, and to respect whatever your ruling may be, but my position is that the Interstate Commerce Commission shall not enter an order which shall have the effect directly or indirectly of setting aside the order heretofore entered by the Georgia Public Service Commission, or to prevent that Commission in its discretion hereafter from entering any other or different or further order with reference to the transportation of these commodities and the rates thereon which in its judgment as the regulatory body of Georgia is required.

Mr. Cotterill: I take it the essence of the Examiner's indication is that for the moment you are reserving any (Rec., 1959) complete ruling you have suggested that the evidence proceed for a while.

Exam. Waters: I would rather consider the questions as they are asked.

Mr. Watkins:

Q. Mr. Brown, will you answer the question?

[fol. 591] A. Yes sir, I am in favor of it.

The effect on our business in Birmingham of the 17517 scale which became effective October 1, 1927, was that we lost about 80 percent of our business in Birmingham. Since that date we have lost the Birmingham market and now Atlanta is largely our market.

Cross-examination.

By Mr. Gwathmey:

We might exist with the present rates without any increase. (Rec., 1960.) I am talking now of the Georgia rates. We are not satisfied with the interstate rates.

By Mr. Watkins:

Q. You are talking now of the Georgia rates, not the interstate rates?

A. Yes sir.

Q. You are not satisfied with them?

A. No.

By Mr. Burchmore:

I am the same J. H. Brown who was connected with the Central of Georgia. Sand Company on February 17, 1926, and testified at that time as a witness before the Interstate Commerce Commission regarding these rates and I testified at that time that 95 percent of our business went to Birmingham. That is not true now.

By Mr. Brooker:

Gaillard and Junction City have always had and now have the same rates respecting rates to Atlanta. (Rec., 1961.)

[fol. 592] Gaillard takes the same rates for deliveries in Atlanta that Junction City has. That is, they reach the Atlanta and West Point terminal or team tracks in Atlanta at the Atlanta rate. We have the same delivery here on the Atlanta and West Point and the Southern Railway on team tracks and we have the same rate they have. I am not positive the Gaillard has the same rates we have to those deliveries, I understand we are on a parity of general rates. As they have team tracks or special deliveries here, I am not able to say (Rec., 1962).

In connection with shipments from Junction City, I suppose they are made from the branch and the Atlanta & West Point to Atlanta at a rate of $1.00 per ton. They are made from Junction City via a junction with the Southern Railway into Atlanta to team tracks on the Southern. The same is true respecting the central of Georgia and

other deliveries. We have received joint line deliveries from Junction City to Atlanta for all deliveries at $1.00 per ton. We are located on both the Atlanta, Birmingham & Coast and the Central Georgia. Shipments from our pits on the Central of Georgia move into Atlanta via Central of Georgia all the way. I don't know the exact distance but it is greater than via the Atlanta, Birmingham & Coast (Rec., 1963).

There are no interchange tracks at Junction City for the interchange of business between the Atlanta, Birmingham [fol. 593] & Coast and the Central of Georgia. Our plants are at Junction City about a mile from the station of the Atlanta, Birmingham & Coast and our plants on the Central of Georgia are two and one-half to three miles to Junction City proper.

By Mr. Watkins:

Our annual shipments approximate 2500 cars the way we run now and our investment, I should say, was $100,000.

By Mr. Brooker:

We are producing washed sand now (Rec., 1964).

The sand we used to ship to Birmingham was not washed and we began shipping washed sand about July, 1926, after we were eliminated from the Birmingham market. Our price was forced down to 35 cents per ton to compete with others into Atlanta, the Southern Railway shippers, Atlanta Supply & Sand Company. In other words, we equalized our price with that of the Southern Railway shippers. I have heard of 60 cents a ton for Southern Railway shippers into Atlanta but I never did see it. We compete with Montgomery shippers of sand into Atlanta (Rec., 1965), and the difference between our rate and the Montgomery rate to Atlanta is about 30 cents. Yes, we did have something to do with making our price 35 cents; they sold their sand f. o. b. their plant at 15 cents a ton, which made a difference of 45 cents.

By Mr. Walker:

Yes, I said we shipped practically all our sand now to Atlanta and our rate to Atlanta is as low as that of any of [fol. 594] our competitors. If the interstate scale were ap-

plied, I understand our rate to Atlanta would be $1.10. (Rec., 1966.)

If the $1.10 were applied, I don't think I would be able to do business on a differential of 10 cents a pound with Southern Railway shippers; we are selling it now as low as we possibly can. It is my understanding the interstate scale would make the rate from Gaillard 10 cents a ton lower than the scale would make it from Junction City to Atlanta. My interpretation is that he would have a $1.00 rate and we would have $1.10.

Mr. Cotterill: If your Honor please, I would like the record to show that objection is made and a motion to strike is made, to any reference by this witness as to whether he would or would not be put out of business by reason of a removal of the discrimination complained of, as being immaterial, and as being a consequence to which the law gives no heed.

Exam. Waters: The record will show your objection.

By Mr. Ribe:

Yes sir, the 2500 cars I shipped last year was sand and since the increase in rate to Birmingham, that movement is off 80 percent. (Rec., 1967.) Before the increase I shipped 400 cars to Birmingham and now I ship about 20.

As for the increase in business over what I testified in February, 1926, it was, I can say we manufacture a special grade of sand that sells better and we are in the Atlanta [fol. 595] market and building up business right along under the rate that I have.

By Mr. Walker:

No, I don't say we have increased much since May 1st of this year, but up to that time we had built up a nice business here and we have held it by cutting the price of sand at the pit to meet that difference of 10 cents; we had a 90 cent rate in here. (Rec., 1968.)

No, not now does any one else have a lower rate to Atlanta than we have, but when the freight rate went up, we had to absorb it and the reason we did was that that was our selling price; we just made it that way. I make my price, yes sir. I don't know that I control the price on sand in Atlanta today; I do my best; I make my prices.

By Mr. Burchmore:

No, I said my business had increased to 2500 cars annually before May 1, 1928. I was not shipping sand to Atlanta before that time. (Rec., 1969.)

We began shipping sand to Atlanta in the early part of 1926 and got tuned up in our business at Atlanta in the latter part of 1926 and during 1927, shipping approximately 2500 cars to Atlanta in 1927.

By Mr. Walker:

Eighty percent of our production went to Birmingham prior to the time we went into the washed sand business, say, prior to 1926. Our Birmingham rate was increased in December, 1927. (Rec., 1970.)

[fol. 596] 80% of our production during 1927, and before the Birmingham rate was increased, went to Birmingham. In 1927 we had a production of 500 or 600 cars for both Atlanta and Birmingham up to December. I should say that would be 7500 cars and 2500 cars went to Atlanta and other points. (Rec., 1971.)

(Witness excused.)

C. W. Moore was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I live at Junction City and have been engaged for 10 years in the sand business at that place, and my principal market now is at Atlanta. 50% of my business moved to Birmingham before the rate increase to Birmingham became effective. I think that was December, 1927. We had a rate of 79 cents or 80 cents which was increased to $1.35. Our mileage to Birmingham based on the Central mileage is about 196 or 200 miles. Since the rate increase to Birmingham, that market has not remained open to me, as prior to the increase we shipped from 50 to 100 cars a month to [fol. 597] Birmingham and since then from 5 to 20 cars a month. (Rec., 1972.)

In our Atlanta business we compete with our washed sand with Montgomery and with Gaillard and Gaillard is our largest competitor. My delivered price on washed sand is $1.30 and on bank sand my delivered price is $1.20, leaving us a net of 30 and 20, and our investment is about 20,000 dollars. Since I have been in business, our rates to Atlanta have increased from 50 cents to $1.00.

Q. Can you continue in business if there is any further increase in your rates to Atlanta?

Mr. Cotterill: I object to the question, — is immaterial under the interstate commerce act.

Exam. Waters: I will let him answer subject to the objection. (Rec., 1973.)

The Witness: No sir.

Q. From your knowledge of the business, from your experience in the business, from your knowledge of the present market conditions, do you favor the continuation of the single line scale now in force in Georgia?

Mr. Cotterill: Same objection.

Exam. Waters: Same ruling.

The Witness: Yes sir.

Cross-examination.

By Mr. Gwathmey:

Prior to the increase of the rate to Birmingham, it was 79 cents for a haul of 200 miles and the same rate was in effect for Montgomery, (Rec., 1974.)

I testified in the former hearing on this sand and gravel question and opposed increase in our rate to Birmingham [fol. 598] and that if the rate were increased it would put me out of business. It has not, but I thought it would. I am not as fortunate as Mr. Brown. My business has been cut about one-third and now I ship largely to Atlanta. Practically none out of Georgia at this time except Birmingham, where we — 5 or 10 cars a month. (Rec., 1975.)

We think we have a superior grade of sand and that it is recognized as a good building sand.

By Mr. Cotterill:

It has been testified here and I suppose correctly that the freight rate from Montgomery to Atlanta is $1.30 and the delivered price on my washed sand is equal to that rate and on the bank sand it is 10 cents less than that rate. (Rec., 1976.)

By Mr. Brooker:

Since May 1st, our average monthly shipments of sand from Junction City are about 100 cars a month and prior to that time they were about 150. (Rec., 1977.)

The reason my price is 30 cents a ton f. o. b. the plant when Brown at Junction City gets 35 cents is that he has the superior sand.

By Mr. Watkins:

On my present operations, I am just about breaking even. (Rec., 1978.)

(Witness excused.)

[fol. 599] L. J. Downs was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I live at Junction City where I have been engaged in the sand business for 22 years. We are on the A. B. & C. and my present market is Atlanta and, our competitive points are on the Southern Railway. Montgomery does not affect me much because I am in the dry sand business and Gaillard is my chief competitor with dry bank sand. (Rec., 1979.)

Prior to the increase of rate to Birmingham, I sold quite a bit there, but since then have shipped only a few cars. My average price is 20 cents a ton f. o. b. my pit.

Q. With your long experience in the business of manufacturing and selling sand where you have been located, and from your knowledge of the situation, are you in favor or

not of the continuation of the one line scale or one scale for all lines now in force in Georgia?

Mr. Cotterill: Same objection, your Honor.
Exam. Waters: Same ruling.

The Witness: I am.

Cross-examination.

By Mr. Gwathmey:

We load by hand (Rec., 1980), and our investment is about $500 or $600, the cost of getting tracks in.

[fol. 600] By Mr. Brooker:

We ship around 40 cars a month and our competition has always been with Gaillard. Gaillard has been shipping some dry sand I think all the time, but I don't know. (Rec., 1981.) We know Gaillard is our chief competition because we run into them in the market. I knew somebody had been shipping it there and I supposed it came from there. I suppose our sand is about the same as Brown's. I don't think Brown is selling very much dry sand. He sells bank dry sand for 15 cents. I deliver in Atlanta exclusively over the A. B. & C. but at different team tracks in Atlanta, as far as East Point. Yes, all over the city.

(Witness excused.)

B. C. Milner was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

I am assistant highway engineer for the State Highway Commission of Georgia which is a large consumer of sand and gravel and slag. (Rec., 1983.) We buy a good deal of slag from Birmingham and sand in Georgia and other points. We have construction work going on practically every county in the state from time to time and it is an advantage to the department to have as many open pits for

sand as we can. Our custom is to accept the lowest bid on all construction work, that is, everything else being equal, we take the lowest bid, and a small difference in the price [fol. 601] per unit of sand would change the acceptance of the bid from one to another. (Rec., 1984.)

The State owns a plant at Oglesby for crushed stone. We are located on the Seaboard Air Line but the greater part of our shipments go over two lines. Until recently the State has been operating that plant at full capacity.

Cross-examination.

By Mr. Brooker:

Yes, quality determines the use of the sand. We have a specification on which all sand is accepted. When I said we always accepted the lowest bid I assumed that the quality of sand passed the specification. (Rec., 1985.)

By Mr. Gwathmey:

I only have charge of making recommendations for purchases. The Board itself has charge of letting the contracts, but I am familiar with purchases made by the Board and know that most of our crushed rock we get in Georgia and we buy a great deal of our sand and gravel in Georgia, all we can that meets the specifications, but we do get some sand from Montgomery. (Rec., 1986.)

I don't know whether our purchases have been largely in Georgia since May 1, 1928 than before that time, and I don't know whether any contracts for the purchase of these materials with producers outside of Georgia were cancelled. If cancelled, it would have been by contractors, as we let these jobs to contractors and they furnish the material. The effort is to purchase, as far as possible, from points in Georgia. If you mean by independent contractors, contractors who are employed to construct a given mileage, [fol. 602] then practically — of the State road construction *road* in Georgia is done by independent contractors. (Rec., 1987.)

By Mr. Walker:

The contracts are made on unit prices per square or cubic yard for paving. For grading, it is all based on the same

thing. I would say probably 25% of the aggregates used in road construction are purchased by the State, leaving 75% purchased by the contractors.

By Mr. Brooker:

During 1928 our Highway construction work has been about the same, probably a little increase; it has been curtailed some in recent months comparing with the beginning of the year and a considerable curtailment this fall. The reason for that has been not altogether weather; our conditions had something to do with it; we had money storms in the early season that took quite a fund. (Rec., 1988.) We have had some jobs completed.

By Mr. Walker:

No, the appropriation has not run out for all the work. We still have work going on, but are short of funds due to disasters that we had. The price bid varies according to the location and accessability. It is a question of transportation as to what unit prices we get.

By Mr. Webster:

The character of materials has to meet our specifications. (Rec., 1989.)

(Witness excused.)

[fol. 603] A. J. Ribe was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I am traffic manager for the Birmingham Slag Company, Birmingham, Ala., which position I have held for about 12 years.

We ship slag principally from Ensley and Alabama City, and to a smaller extent from other points within the Birmingham district.

I am also representing the Montgomery Gravel Company, of Montgomery, Ala., which is a subsidiary of the Birmingham Slag Company.

I participated in the former hearing of this case and appeared as a witness.

I have just two exhibits I would like to file, and I will offer the first one now. (Rec., 1991.)

I desire to offer as my exhibit No. 157-B, being largely a duplication of some of the exhibits presented by the carriers. I desire to get this exhibit into the record because I think it is in more convenient form, since it compares not only the general scale with the Georgia scale over the Trunk Lines single and joint line, but also makes a comparison over the short lines, and shows the rate differences in all instances.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 157-B, Witness Ribe.")

This exhibit is in error at the bottom to the extent of showing that the general basis is now in effect in South [fol. 604] Carolina.

I should explain that the general basis is not in effect 100 per cent in all of the states listed. For instance, in Florida it is in effect only on the line of the Louisville & Nashville Railroad from River Junction and west.

In Tennessee, as I recall it, it is in effect generally in central and eastern Tennessee.

Also the Virginia application is somewhat limited.

The rate columns headed "Georgia," are the rates in effect in Georgia, and the other columns headed "General," are the rates in effect generally in the southeast interstate, and also intrastate in other states than Georgia. (Rec., 1991.)

Back in the early part of August of this year, I asked our sales department, that is, the sales department of the Birmingham Slag Company, to supply me with a list of the projects on which they had bid during the year previous and had lost to competitors in Georgia. I was supplied with a list of nine such projects involving a total tonnage of 129,805 tons. In asking for that information from the sales department I asked that they detail the project number, the unloading points, the tonnage, and the shipping points, and the successful bidders.

I now wish to offer my exhibit No. 158-B, which details those projects, and which shows the rates to the unloading points from the shipping points of the successful bidders.

(The same was thereupon received in evidence, marked [fol. 605] "Shippers' Exhibit No. 158-B, Witness Ribe.")

I think the exhibit speaks for itself, but I desire to call attention to the fact that from the Georgia origins I have not only shown the mileage rates which have been in effect since May 1, 1928, but I have shown the rates that were in effect between April 1, 1925 and April 30, 1928, and the rates in effect prior to April 1, 1925. In other words, I have shown three sets of rates from the Georgia origins, and compared them with the docket 17517 basis. (Rec., 1992.)

At the bottom of the exhibit the various rates have been totaled and simple averages struck.

It will be noted that the Georgia rates back in 1925, denoted an average of 140 cents a net ton. By the new rates that went into effect on April—in April, 1925, that average was reduced to 103 cents. By the last rates that went into effect May 1, 1928 the rates were reduced to an average of 96 cents, which is 19 cents lower than the rates would be under the docket 17517 basis.

Also in this exhibit I have inserted the rates from Ensley, Ala., our principal shipping point, to the same points of destination, showing not only the rates in effect prior to October 1, 1927, but the rates in effect since that date. It will be noted that on the average we get an increase of two cents a ton.

Cross-examination.

Mr. Burchmore:

The first project was supplied by Clermont, Ga., instead [fol. 606] of slag from Ensley, or gravel from some other place. On the first project, the stone moved to Lawrenceville, Dacula, Auburn and Carl, Ga., four unloading points. I cannot tell you whether we bid at Ensley on a haul short line of around 200 miles and Clermont bid on a haul of 49 to 60 miles, because I don't know the way the Sales Department bid, whether they supplied the material from Alabama City, or elsewhere; Ensley was put on the exhibit as a comparison only by myself. We have a plant at Alabama City which is shorter by 55 to 60 miles to North Georgia,

and through Atlanta south, around 30 miles shorter. (Rec., 1994.)

I would like to add, Mr. Burchmore, that the reason I used Ensley in preference to Alabama City is due to the fact that Ensley is in the Birmingham district, and reached by more Georgia Trunk Lines than Alabama City, and I used Ensley having in mind the contention of some of our Georgia friends that our advantage is in having more single line hauls than the Georgia shippers.

By Mr. Webster:

The last two columns are the rates from Ensley and the first four rate columns are the rates from the Georgia origins; they are not comparable. (Rec., 1995.)

By Mr. Watkins:

From these particular points, yes, it is correct to say that for an average distance of 83 miles the Georgia shipper pays 96 cents, and if docket 17517 were put in we would pay $1.15. (Rec., 1996.)

(Witness excused.)

[fol. 607] ROBERT N. SPRINGFIELD was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

Mr. Burchmore: Mr. Examiner, the Georgia Public Service Commission is appearing in this proceeding in protection of its order of March 13, 1928, and its jurisdiction over the intrastate rates in Georgia, and as the Examiner of the Interstate Commerce Commission will appreciate, is (Rec., 1996) in a somewhat different position than the ordinary litigant, in that the Georgia Commission has a duty, is a public body in Georgia, with the duty to justly determine the freight rates and charges of the railroads impartially as between the shippers, the railroads themselves, and the public that pays the freight in the last analysis. And also in this situation the Georgia Public Service Commission is a body which ordinarily obtains its information in the same way that the Interstate Commerce Commission obtains in-

formation, that is by the facts adduced at public hearings at which all parties in interest are permitted to testify to relevant matters.

I explain that because there are some features ordinarily gone into in rate matters that involve questions that are not concerned in the business of the Georgia Public Service Commission in the way that they are in the business of a carrier or the business of a shipper.

We have some facts to present in opposition to the proposed section 13 order, and in support of the order heretofore ordered by the State Commission.

[fol. 608] I reside at Atlanta, Ga., and am secretary of the Georgia Public Service Commission, which office I have held for 3½ years. (Rec., 1997.)

I have written a true copy of portions of the Constitution of Georgia and of the statutes providing for the Georgia Public Service Commission which compillation is made for presentation as an exhibit in this case by Chairman Perry of the Commission.

(The same was thereupon received in evidence, marked "Georgia Public Service Commission's Exhibit No. 159-B, Witness Springfield.")

I now present a true copy of the order dated March 13, 1928 in docket No. 16384. The order was entered after public hearings, on a petition which had been filed by the carriers, as recited in the order, and after consideration of the case by the members of the Commission in executive session, all being in accordance with the orderly procedure customarily followed by the commission. (Rec., 1998.)

Mr. Burchmore: We offer this true copy of this order in evidence, and ask that it be received and marked as exhibit 160-B.

(The same was thereupon received in evidence, marked "Georgia Public Service Commission's Exhibit No. 160-B, Witness Springfield.")

No petition for a rehearing or reconsideration has been filed with the commission in the proceeding covered by that order of March 15, 1928, and there is not pending on the docket of the Commission any application or petition of any [fol. 609] carrier, person, firm or corporation seeking or

involving any proposed increase in rates in Georgia on sand, gravel, crushed stone, slag, or chert. I take no part in the deliberations of the Commission in rate cases, and had nothing to do with the adoption of the Commission's order of March 13, 1928. (Rec., 1999.)

(Witness excused.)

E. M. PRICE was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Burchmore:

I reside at Atlanta, Ga., and am connected with the Georgia Public Service Commission, having held the position for the past nine years with the title of Rate Expert and as such am familiar with the sand, gravel and crushed stone rate adjustments within Georgia, as well as its history and the relationship of the state rates to interstate rates. I have prepared a number of statements to be offered as exhibits in this proceeding which are to the best of my knowledge true and correct according to the tariff scales and orders upon which they are based. If there are any errors they are unknown, inadvertent and clerical. (Rec. 2000.)

In connection with the first exhibit, a map marked 161-B, I desire to state briefly the history of the rate situation in Georgia.

The Georgia Commission entered an order dated February 25, 1925, and by its terms effective April 1, 1925, the effect of which was to increase or permit the carriers to [fol. 610] increase, very materially the rates on sand, gravel, crushed stone, slag and chert between points in Georgia where the preponderance of the movement was taking place.

Prior to April 1, 1925, the rates in Georgia on sand, gravel, crushed stone and so forth, were in a very chaotic condition. The Georgia Commission had made a revision of these rates in 1917, but the order never became effective on account of federal control of the carriers, which caused the Georgia Commission to indefinitely suspend the effective date of its order.

Prior to the revision by the Georgia Commission, effective April 1, 1925, the great preponderance of the movement of these materials between points in Georgia was on special rates, voluntarily established by the carriers, and lower than the maximum rates then authorized by the Commission, on what is known as the class P basis. (Rec. 2002.)

Some of the carriers had not seen fit to establish any special rates for the purpose of equalizing the points of production on their lines with the points of production on lines that had established these special rates, and on this account the Georgia Commission was confronted with many complaints of alleged discrimination.

In view of the location of the Georgia industries it was and is the expressed judgment of the Georgia Commission that, to provide rates on basis of combination, or with joint line differentials for any extended distance, would have the effect of causing undue discrimination between the Georgia [fol. 611] shippers, that is, against certain shippers in Georgia, in favor of other shippers in Georgia, and would also cause discrimination against the Georgia shippers in favor of shippers with plants at Montgomery, Ala., Birmingham, Ala., and Chattanooga, Tenn..

Mr. Cotterill: Your Honor, I do not quite know what was the scope of the prior hearing—you made reference to this—but as far as I have heard it, it strikes me as far afield from any issue here involved. (Rec. 2002.) It may be taken for granted that the Georgia Commission has proceeded with the best information before it, but that is not the question in issue. It is immaterial to any pending question what may have been the motive of our Georgia Commission, the sincerity with which it functioned, or the past conditions which it had before it. I most respectfully request the Examiner to limit the testimony to matters in issue in the case on trial.

Mr. Gwathmey: It must be understood, Mr. Examiner, that I join in that objection.

Exam. Waters: I understand thoroughly, but I am not quite inclined to be as technical as you are, and to be a little more liberal. The gentlemen have prepared their defense, and if I think it is going too far beyond the line, I certainly will call a halt. (Rec. 2003.)

A. My exhibit No. 161-B is a map of all the railroads in Georgia, and this map also shows the location of some of the principal producing points in Georgia of sand, gravel, and crushed stone.

[fol. 612] To illustrate what I have just stated, it will be noted that a crushed stone plant is located on the Georgia Railroad just northeast of Macon, between Milledgeville and Warrenton, Ga., this particular plant being located at Sparta, Ga.

It will be noted there is a crushed stone plant on the Central of Georgia Railway at Perry, Ga., just southwest of Macon, Ga.

There is also a crushed stone plant located on the Southern Railway, just north of Macon, at Holton, Ga.

These plants would all come in competition with each other on any business developed on the line of the Central of Georgia, or Southern Railway.

It will be noted that the territory of the Sparta plant on the Georgia Railroad would be exceedingly limited if confined to business on the Georgia Railroad; whereas, the plant on the Southern Railway, or the plant on the Central of Georgia Railway, would have a considerable territory on single line. However, there is a great deal of territory reached by the Southern Railway that could not be reached by either the Perry, Ga., or Sparta plant on single line. A glance at this map shows that this illustration may be multiplied many times.

This map also shows the lines of railroads operating out of Montgomery, Birmingham and Chattanooga through Georgia.

From Montgomery it will be noted that the Atlanta & West Point Railroad have the direct line to Atlanta, which [fol. 613] is one *one* of the principal markets for these materials in the South.

It will also be noted that the Atlantic Coast Line, Seaboard Air Line and Central of Georgia Railway have their direct rails across the state, with a net work of branch lines through the state, which provides for single line movement from Montgomery to all that territory.

The producers in Georgia at points on the Georgia Railroad, the Southern Railway, and the Atlanta, Birmingham and Coast Railway come in competition with the producers at Montgomery, and it will be noted that in every

instance the movement from the Georgia producing point to points located on the lines of the Atlantic Coast Line, Central of Georgia and Seaboard Air Line would be joint line. (Rec. 2005.)

This map shows the same condition at Birmingham, Ala., which is served by the Central of Georgia; Atlanta, Birmingham & Coast; Southern Railway, and Seaboard Air Line Railway. All of these lines, except the Seaboard Air Line, operating out of Birmingham, directly across the state of Georgia with single line hauls. This is also true of the situation at Chattanooga, Tenn., where the Central of Georgia and Southern Railway have direct lines throughout the state of Georgia.

Exhibits which will be filed later will show more in detail the rate situation caused by the location of these Georgia industries, and the state being served by both [fol. 614] north and south lines and east and west lines.

Mr. Burchmore: We offer this map in evidence as exhibit 161-B and ask that it be received.

Mr. Cotterill: Mr. Examiner, I reserve objection until the use is made a little plainer. The map as a map is not objectionable. It may be shown to be objectionable later, and I reserve the right——

Mr. Burchmore: The map is offered for this express purpose, and for any other purpose for which it may be useful, namely: Exhibit 160-B is a copy of an order regularly made and entered by the Georgia Public Service Commission prescribing rates within the state of Georgia, and in which certain of the facts are set forth. (Rec. 2006.) Among other things there is a statement alluded to by Mr. Price in his comments on this exhibit, that to prescribe within the state of Georgia a joint line scale higher than a single line scale would produce unjust discrimination against Georgia producers and in favor of other Georgia producers. The map is in part offered as a part of the witness' showing that it is true, namely, that the joint—that a joint line *indentional* with a single line scale in Georgia would effectuate these discriminations thus found by the Georgia Commission.

Mr. Gwathmey: That being true the map is objected to.

Mr. Cotterill: Certainly it is. We will fight that out right now.

Mr. Burchmore: Oh, no, we will not fight anything out; [fol. 615] we will have a ruling possibly by the Examiner. I certainly was frank in telling you what it showed.

Mr. Cotterill: I appreciate it. Now, your Honor, the proposition is this: This exhibit is tendered as relavant to this proceeding as supporting or tending to support a certain conclusion of the Georgia Public Service Commission that there would be discriminations within the state of Georgia as between shippers and communities if a joint line charge is made higher than for single line movements. (Rec. 2007.) We most respectfully say that there is no question of that character pending before the Interstate Commerce Commission, and therefore, this exhibit and the testimony to which it refers, is wholly irrelevant and immaterial.

Mr. Walker: I join in the objection, Mr. Examiner.

Exam. Waters: I will take it subject to the objection.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 161-B, Witness Price.")

Mr. Cotterill: Pardon me for asking the form of your ruling. You say you admit it subject to the objection?

Exam. Waters: Yes, sir.

Mr. Cotterill: May I ask whether you have sustained or overruled the objection?

Exam. Waters: So far as I am concerned you may consider your objection overruled.

By Mr. Burchmore:

My exhibit No. 162-B is a comparative statement of the single line rates on chert, sand, crushed stone, and so forth, [fol. 616] prescribed by the Georgia Commission, as compared with the interstate rates prescribed as maximum in Interstate Commerce Commission docket I. C. C. 17517.

The purpose of this exhibit is to show the relative measure of the two sets of rates.

It will be noted that for distances under 190 miles the Georgia rates are in most instances the same as the interstate rates, but in some instances are five and ten cents per ton less; whereas, for distances above 190 miles, up to and including the maximum distance of 460 miles, the Georgia rates are the same or higher than the maximum interstate

rates, in most instances the Georgia rates being five cents and ten cents per ton greater than the maximum interstate rates. (Rec. 2011.) Yes, the column showing I. C. C. 17517 is the single line scale prescribed by the Commission.

Mr. Burchmore: We ask that this exhibit be received as exhibit 162-B. (Rec. 2012.)

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 162-B, Witness Price".)

My exhibit 163-B shows the rate of progression of the Georgia scale. This exhibit is self-explanatory and shows the consistency of the rate of progression. Up to 130 miles there is a ten cent addition for each 20 miles of distance then ten cents for each 30 additional miles up to 280 miles, and beyond that ten cents for each 40 miles to the maximum haul with the state of 460 miles.

Mr. Burchmore: We ask that this be received as exhibit [fol. 617] 163-B.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 163-B, Witness Price.")

What is shown by your next exhibit, Mr. Price, marked 164-B?

My exhibit No. 164-B shows the rate of progression of the interstate scale, I. C. C. docket 17517.

Attention is directed to what we consider an inconsistency in the rate of progression of the rate. It will be noted that the mileage blocks are made up of 10 miles, 20 miles, 25 miles, 30 miles and 40 miles, but the rate is not graded uniformly with the mileage blocks. (Rec. 2013.)

Mr. Burchmore: At this point we offer 164-B and ask that it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 164-B, Witness Price.")

The rate prescribed by the Georgia Commission, effective April 1, 1925, on crushed stone and gravel for the distance of 175 miles, was 130 cents.

At that time the rate making distance from Montgomery, Ala., to Atlanta was published by the Western of Alabama

and Atlanta & West Point Railroad, in its tariff I. C. C. 80, as 174 miles.

It will be noted that the rate fixed in docket 17517, for a distance of 175 miles, is 130 cents, which is the same as that prescribed by the Georgia Commission for this distance. However, it will be noted that the rate of progression for the next 25 miles in the 17517 scale is only five cents; [fol. 618] whereas, the previous blocks were 10 cents, and it will be noted that the following mileage block of 30 miles also shows a rate progression of five cents, and then in the next two 30 mile blocks the rate progression returns to 10 cents. (Rec. 2014.)

Entirely independently of any sand, gravel or stone matter, on June 30, 1927, the Atlanta & West Point Railroad filed a petition with the Georgia Commission for authority to revise its distance table between Atlanta & West Point, Ga., this railroad being a strictly intrastate line. At the time of the filing of this petition the distance between Atlanta and West Point was shown as 86 miles, and the petition asked authority to increase this distance to 90 miles.

After proper hearing the Georgia Commission found that the petition of the Atlanta & West Point Railroad was justified, and authority was granted on September 15, 1927 to increase this tariff distance, to conform to the actual rail distance. This increase in tariff distance between West Point and Atlanta had the effect of increasing the tariff distance from Montgomery to Atlanta from 174 miles to 178 miles, which was published by the Atlanta & West Point and Western of Alabama Railroad in supplement 2 to its tariff I. C. C., A-80, effective September 22, 1927.

Effective January 3, 1928, by supplement 3 to Western of Alabama Railroad I. C. C., A-80, the tariff distance from Montgomery to West Point was decreased from 88 miles to 86 miles, which produces the present tariff distance from Montgomery to Atlanta, via the direct line of Western of [fol. 619] Alabama and Atlanta & West Point Railroad, of 176 miles. (Rec. 2015.)

In other words, the short line tariff mileage from Montgomery to Atlanta has been changed to 176 miles to conform to the actual physical rail distance, single line.

As is shown on my exhibit, the rate prescribed in docket 17517, for distances 200 miles and over 175 miles, is 135 cents. The rate published by the carriers from Montgomery to Atlanta is 130 cents. This rate will be discussed in later exhibits.

My exhibit No. 165-B is a statement showing the rates prescribed by the Georgia Commis-ion in effect prior to May 1, 1928, with the present rates and rates prescribed as maximum in I. C. C. docket 17517.

It will be noted that the intrastate rates in effect prior to May 1, 1928, which were the maximum rates made effective April 1, 1925, provided for a slightly higher basis on crushed stone, washed gravel and slag, than on chert, sand, and so forth, and also provided for a joint line differential for distances under 100 miles.

The present rates in Georgia, which were made effective May 1, 1928, it will be noted for the most part, are higher than the joint line rates previously in effect in Georgia on sand, gravel, and so forth, and in most cases equal or are higher than the joint line rates on crushed stone, and so forth, in effect at that time, for distances above 100 miles. (Rec. 2016.)

[fol. 620] It will be noted that the present Georgia rates are generally equal to or higher than the maximum single line rates in I. C. C. docket 17517, and for distances above 300 miles are the same as the maximum joint line rates in I. C. C. docket 17517.

Mr. Burchmore: We offer exhibit 165-B and ask that it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 165-B, Witness Price.")

Mr. Gwathmey: I want it understood that the objection stands to these exhibits.

Mr. Burchmore: If there is to be objection, I want it made as these exhibits are offered. We may stop offering exhibits if they are objected to.

Mr. Gwathmey: I merely want to save the point in a general way.

Mr. Burchmore: If you have a point to make now that applies to the other exhibits, I will be glad if you will make it, because I want to know what it is.

Mr. Cotterill: I have stated my position. This case is limited by its terms to a question whether there is or there is not a violation of section 13. (Rec. 2017.) There is nothing in the exhibits so far offered which bears on that issue and, therefore, it is irrelevant to the only question that is pending. If its relevancy can later be established, that is something else.

Exam. Waters: We understand your position, Mr. Cotterill. There might be some specific part of some of these exhibits that you might want to object to in addition to your [fol. 621] general objection.

Mr. Gwathmey: Up to this time I have only the general objection already noted, it being on the same grounds as that stated by Mr. Cotterill.

Mr. Burchmore: Does that objection lie to exhibits 161-B to 165-B inclusive, or either of them?

Mr. Gwathmey: The objection lies generally to all of the exhibits insofar as they may have a bearing or be used as bearing upon the matter to which we have referred. Now, the exhibits are not objectionable for certain purposes. For instance, exhibit 162-B, as I understand it, is simply a comparison of the interstate and intrastate scales, and simply shows the discrimination complained of. The general objection I think is clear.

Exam. Waters: I think it is pretty clear in the record.

Mr. Burchmore: Well, I want my position to be clear, that I ask that no objection shall be considered unless specifically made to an exhibit. I want really to know if any of them is objectionable even on the ground that is generally stated. (Rec. 2018.)

Mr. Cotterill: Every one of them is objectionable on that ground insofar as they are to be used in any way, shape or form for any purpose other than the issues involved in this proceeding.

[fol. 622] Mr. Burchmore: When an exhibit is offered without stating its purpose, I take it that it is offered for any material or relevant purpose.

Mr. Cotterill: And that is the reason why the objection is stated in the same terms, that it is objectionable if it is

to be used for any purpose other than the issues involved in this proceeding.

By Mr. Burchmore:

Q. What has been the policy and course of the Georgia Public Service Commission with regard to the joint line and single line mileage scales?

Mr. Gwathmey: I understand from Mr. Burchmore that he is insisting that we make our objection specific in each instance, so I am therefore compelled to note my objection to the witness answering this question.

Mr. Cotterill: Certainly the policy of the Georgia Commission in the past, present and future is irrelevant to any pending question before this Commission, and is objected to most seriously. (Rec. 2019.)

Mr. Walker: In order to conserve time, I would like the record to show that I join in the objections made by Mr. Gwathmey each time they are made, on behalf of the carriers I represent.

Exam. Waters: He may answer subject to the objections which are already in the record.

The Witness: Prior to May 1, 1923, all rates authorized by the Georgia Commission applied single line over the [fol. 623] individual carriers, both for classes and commodities, and Freight Rule No. 27 of the Commission provided that joint line rates would be made 90 per cent of the locals of each line.

Effective May 1, 1923, the Georgia Commission revised all the class rates and provided for joint line scales that were differentials higher than the single line scales, this revision being a part of the general revision of all rates between points in Georgia that was started by the Georgia Commission July 14, 1921.

Subsequent to May 1, 1923, the Commission has revised the rates on many of the principal commodities, including cotton, cottonseed, canned goods, road oil, peanuts, agricultural limestone, cotton ties, potatoes, velvet beans, sewer pipe, waste wood, roofing, tile and furniture. The revision of the rates on the commodities just named was made prior to the order of the Interstate Commerce Commission in the Southern Class Rate case, I. C. C. docket 13494, and the

Georgia Commission provided for joint line differentials in each of these cases. (Rec. 2021.)

Subsequent to the Southern Class Rate class, I. C. C. docket 13494, the Georgia Commission has adopted and put in force the class rates prescribed by the Interstate Commerce Commission, and has also revised the rates on fertilizer, sugar, roofing, wooden building material, cement, lime, brick, sand and gravel, iron and steel articles. The Georgia Commission did not provide any joint line differentials on any of these commodities, except on brick, in which case [fol. 624] the Georgia Commission approved the rates which had been approved by the Interstate Commerce Commission in its docket I. & S. 1885, and the joint line differentials on brick faded out at 80 miles.

It is correct to say that in prescribing rates on sand and gravel in its first order, effective April 1, 1925, the Georgia Commission did provide for joint line differentials under 100 miles, but when these rates were again revised, effective May 1, 1928, the single line rates were generally increased and all joint line differentials eliminated.

Q. Now, will you comment on what has been shown by exhibits 161-B to 165-B, inclusive, in the light of what you have said about the policy of the Georgia Commission, and in the light of the decisions of the Interstate Commerce Commission dealing with this principle? (Rec. 2021.)

Mr. Cotterill: If your Honor please, out of deference to counsel's insistence that objections be stated when they occur, I must respectfully urge that this is no time and place for this witness to comment any further on his own exhibits in the light of decisions of the Interstate Commerce Commission. We will come to the argument of the case on those decisions of the Commission at a later stage of the proceeding.

Exam. Waters: I feel that you ought not to pursue this question too far. I am trying to be justly liberal, but I do not want to go too far about this. I think these decisions speak for themselves, and can be examined by any one.

Mr. Burchmore: I think, Mr. Examiner, I may fairly [fol. 625] say for the Georgia Public Service Commission that where the Interstate Commerce Commission is conduction- a proceeding to see whether in effect its judgment and its order shall supersede the judgment and order of

the State Commission of Georgia, that the State Commission of Georgia is entitled to ask that the Interstate Commerce Commission shall hear all of the evidence that the rate expert and counsel for that Commission sincerely believe is pertinent to the showing of the integrity of the order, and necessary to the defense against the substitution of the judgment of the Interstate Commerce Commission here. I ask that Mr. Price be permitted to answer this question. If you think he should not answer it, I will ask you to sustain the objection, but I am going to ask him to answer unless you do sustain the objection. (Rec. 2023.)

A. As we have shown by exhibits which I have filed, if joint line differentials should be applied to the rates on sand, gravel and crushed stone in Georgia, it would have the effect of causing discriminations between the producers and shippers of these materials in Georgia, and would also cause discrimination against the shippers in Georgia in favor of shippers at Birmingham and Montgomery, Ala. For this reason I am of the opinion that the Georgia Commission was clearly justified when it provided a common scale to be applied for both single and joint line, the rates provided in this scale being generally higher than the rates previously in effect in Georgia.

[fol. 626] The Interstate Commerce Commission has not held strictly to the theory of joint line differentials in prescribing rates for interstate application in southern territory, although it is true that prior to the Southern Class Rate Investigation, I. C. C. docket 13494, in some cases the Interstate Commerce Commission did prescribe joint line differentials. (Rec. 2025.)

However, subsequent to docket 13494, the Interstate Commerce Commission has prescribed scales of rates on cement, docket 15806; sugar, docket 13569; fertilizers, docket 16295; paving material, docket 17805; lime, docket I. & S. *a*874; roofing, docket 11203; sand and gravel, docket 17517.

No joint line differentials were authorized in any of these cases, except in docket I. & S. 2874, rates on lime between southern points, in which case the Commission found justified the carriers' proposed rates. The rates published by the carriers, which were found justified by the Commission, provided for joint line differentials under 80 miles, at which point the single and joint line rate merged.

In brick and clay products in the south, I. & S. docket 1885, the Interstate Commerce Commission prescribed a distance scale which provided for joint line differentials under 80 miles, where it was merged with the single line scale.

In the matter of rates on brick and clay products, the carriers submitted to the Georgia Commission for approval the rates prescribed by the Interstate Commerce Commission in I. & S. 1885, and the record before the Georgia Com- [fol. 627] mission shows that on account of competitive conditions it was necessary to merge the single and joint line scales at 80 miles. These rates were approved by the Georgia Commission. (Rec. 2026.)

The carriers also submitted to the Georgia Commission for approval the rates on lime which were found justified by the Interstate Commerce Commission in I. & S. 2874. After considering the evidence in this case, it was the expressed judgment of the Georgia Commission that joint line differentials should not be applied on intrastate lime traffic in Georgia, and therefore, the Georgia Commission revised the lime rates for distances under 100 miles, and eliminated the joint line differentials. In doing this some of the single line rates that had been proposed by the carriers were permitted to be increased.

In I. & S. docket 2414, salt, between western and southern points, the Interstate Commerce Commission prescribed a distance scale of rates in the southwest that was made to apply single and joint line, and in its order pointed out that the addition of differentials for joint line hauls from and to many points over a wide scope of territory is always attended with serious complications.

In the Western Cement case, 48 I. C. C. 201, the Commission prescribed a common scale for single and joint line application, also in the Hudson Valley Coke & Products Corporation case, docket 18386, decided July 20, 1927, 129 I. C. C. 472, the Commission established a mileage scale on coke without joint line arbitraries. This is also true in [fol. 628] the Hudson Valley Coke & Products case, docket 18387, 139 I. C. C. 59, where the Commission prescribed a mileage scale on pig iron from Troy to New England points without joint line differentials. (Rec. 2027.)

From this it will be noted that although the Interstate Commerce Commission has in some cases prescribed joint

line differentials, the tendency at least has been to prescribe rates without joint line differentials.

Q. Have you prepared a series of exhibits which deal with the statements that are attached to the carriers' printed complaint that preceded the institution of this hearing, and which carriers' exhibits purported to show a discrimination against interstate points caused by the Georgia rates?

—. My exhibit 166-B is a statement showing corrections which we have made on exhibit B attached to the complaint. I have also added to this exhibit figures showing what the rates would be from Columbia, S. C., to points in Georgia if the rates prescribed by the Georgia Commission were applied.

It will be noted that the carriers' exhibit B shows the rate from Columbia, S. C., to Willacoochee, Ga., under the 17517 scale, to be 170 cents; whereas the carriers have actually published a rate of 160 cents. (Rec. 2028.)

It will also be noted that the rate published from Columbia to Brookfield, Tifton and Sylvester, Ga., is less than the 17517 maximum scale.

[fol. 629] This exhibit of the carriers also shows a comparison of rates from Steel Creek, S. C., and Montgomery, Ala., to various Georgia points, which are shown on page 2 of my exhibit, and it will be noted that the rates from Steel Creek to Willacoochee, Tifton and Ty Ty, Ga., are lower than the maximum rates prescribed in docket 17517.

In connection with this exhibit it will be noted there will be no great difference in the present rates from these interstate points to Georgia destinations shown if the Georgia rates were applied interstate.

Mr. Burchmore: We offer exhibit 166-B and ask that it be received, unless there is objection thereto.

Mr. Gwathmey: We note the objection already made. (Rec. 2029.)

Exam. Waters: It is received subject to all the objections made.

(The same was thereupon received in evidence marked "GPSC Exhibit No. 166-B, Witness Price.")

My exhibit No. 167-B is a statement showing Exhibit C attached to the complaint of the carriers and to which I

have added the Georgia rates to show the result if the Georgia rates were applied from the interstate points of origin.

The effect of this exhibit is practically the same as my previous exhibit.

I would like to direct attention to the rate from Lithonia, Ga., and Columbia, S. C., to Vidalia, Ga. The distance from Lithonia to Vidalia is 206 miles and the rate prescribed by [fol. 630] the Georgia Commission effective May 1, 1928 is 140 cents per ton, and the carriers are seeking in effect an order that would increase it to 150 cents per ton. This is compared with the interstate rate of 140 cents per ton from Columbia to Vidalia, a distance of 217 miles. (Rec. 2030.)

Mr. Burchmore: We offer that in evidence as exhibit 167-B and ask that it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit 167-B, Witness Price.")

Q. What is your next exhibit, Mr. Price?

A. My exhibit No. 168-B is a statement of exhibit E attached to the complaint, showing corrections which we have made.

Attention is directed to the many errors in the carriers' exhibit in the rates and distances from Elberton, Ga., to points of destination shown on this exhibit.

It will be noted that the carriers' exhibit shows the distance from Elberton to Cartersville, Ga. as 82 miles, and the present Georgia rate from Elberton as 90 cents per ton; whereas, the correct distance from Elberton to Cartersville is 154 miles, and the maximum rate authorized by the Georgia Commission is 120 cents, and the carriers seek to increase the rate to 140 cents. This rate from Elberton to Cartersville is compared with the rate from Knoxville, Tenn., to Cartersville where the distance is 148 miles, or only six miles less than the distance from Elberton, and the rate is 120 cents, the same as the present rate from Elberton to Cartersville, or 20 cents per ton lower than the rate would be under the order apparently sought by the [fol. 631] carriers in this proceeding. (Rec. 2031.)

Attention is also directed to the exhibit showing the rate from Junction City to Cartersville of 120 cents for a distance of 149 miles, as compared with the same rate from

Knoxville, Tenn., to Cartersville for a distance of 148 miles.

This exhibit, as corrected, shows a correct picture of the situation, and certainly does not show that the Georgia shipper has any advantage over the shipper at Knoxville and Chattanooga for equal distances.

Mr. Burchmore: We offer exhibit 168-B in evidence and ask that it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 168-B, Witness Price.")

(Subject to objections by Messrs. Gwathmey and Cotterill.) (Rec. 2032.)

My first of such series is a statement of rates on crushed stone from Stockbridge, Ga., which is located on the Southern Railway, just south of Atlanta, as compared with the rates from Norris, Ga., which is located on the Georgia Railroad, 72 miles northeast of Macon, the destination territory being the line of the Southern Railway south of Macon, between Macon and Brunswick, Ga.

Norris, Ga., is not shown in appendix A of docket 17517 as a shipping point. However, this is one of the most important shipping points of clay gravel in Georgia.

This movement will be single line from Stockbridge and joint line from Norris, the junction point being Macon, Ga. [fol. 632] It will be noted that the distance from Stockbridge to Hawkinsville is 118 miles. The rate prescribed by the Georgia Commission is 110 cents, which is the same rate in docket 17517, single line for this distance. (Rec. 2033.) The distance from Norris to Hawkinsville is 121 miles, and the rate prescribed by the Georgia Commission is 110 cents, or the same as from Stockbridge. However, should the full 17517 scale be applied from Norris, the rate would be 125 cents, or a discrimination against Norris to the extent of 15 cents per ton.

To McRae, Ga., the distance from Stockbridge is 146 miles, and from Norris 149 miles. The rate fixed by the Georgia Commission from both points is 120 cents, whereas the full measure of the scale rates fixed in docket 17517 would be 120 cents from Stockbridge and 135 cents form Norris. This discrimination is reflected throughout the exhibit. In other words, the rates fixed by the Georgia

Commission removes any possibility of discrimination between these Georgia industries, whereas the application of the 17517 rates would create discrimination.

It is true there is no direct competition between the material produced at Norris, which is clay gravel, and the material shipped from Stockbridge, which is crushed stone.

But under former orders of the Georgia Commission, and in many former interstate railroad tariffs, clay gravel enjoyed lower rates than washed gravel and crushed stone, [fol. 633] and was brought up to a uniform level or common rate with crushed stone by the order in docket 17517. (Rec. 2034.)

My next exhibit will not be subject to this comment, since it involves two shipping points producing directly competitive materials.

Mr. Burchmore: We offer the exhibit just described by the witness and ask that it be received in evidence as exhibit 169-B.

Mr. Gwathmey: Same objection.

Exam. Waters: It will be received subject to the objection.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 169-B, Witness Price.")

In Exhibit 169-B, on the first line, Norris to Macon, should appear as a single line instead of joint line haul, and in the last column, the 17517 maximum scale should be 90 cents instead of $1.05. (Rec. 2035.)

My exhibit 170-B is similar to my previous exhibit, being a statement of rates on gravel and crushed stone from Columbus, Ga. and Graysville, Ga. (Rec. 2036.)

Columbus, Ga. is located 116 miles southwest of Atlanta, and is served by the Southern Railway for the purpose of this exhibit. It is not named among the producing points in appendix A to the decision in No. 17517, but it is an actual shipping point of washed gravel. Graysville, Ga., is a shipping point of crushed stone, and is located on the Western & Atlantic Division of the Nashville, Chatta- [fol. 634] nooga & St. Louis Railroad, 120 miles north of Atlanta.

The destination territory on this exhibit is the line of the Southern Railway northeast of Atlanta to the South Carolina state line, Atlanta being the junction point.

On this exhibit it will be noted that the distance from Columbus to Gainesville, Ga., is 169 miles, and from Graysville to Gainesville 173 miles. The rate fixed by the Georgia Commission from both Columbus and Graysville to Gainesville is 130 cents per ton; whereas, the rates fixed in docket 17517, and which it is apparently sought in this proceeding to impose as minimum intrastate rates, are, from Columbus, 130 cents, and from Graysville, 140 cents per ton, or a discrimination in favor of Columbus of 10 cents per ton.

The distance from Columbus to White Sulphur, Ga., is 175 miles, and from Graysville to White Sulphur, 179 miles, and the rate fixed by the Georgia Commission to White Sulphur from both Columbus and Graysville is 130 cents. This is also the rate fixed in docket 17517 for the distance from Columbus to White Sulphur, but docket 17517 fixes a maximum rate for the joint line distance from Graysville to White Sulphur of 145 cents, which would create a discrimination against Graysville of 15 cents per ton. (Rec. 2037.)

These discriminations are reflected throughout the exhibit.

Q. When you speak of discriminations, you are speaking of intrastate, are you not?

[fol. 635] A. These exhibits here are picturing the Georgia situation.

Mr. Burchmore: We offer exhibit 170-B in evidence, and ask it be received.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 170-B, Witness Price.")

Mr. Gwathmey: We make the same objection, Mr. Examiner.

Exam. Waters: Same ruling.

In the first line of my exhibit, 170-B, Graysville to Atlanta should be single line; 120 miles, and the 17517 scale for that distance is $1.10. (Rec. 2038.)

My exhibit No. 171-B is a comparison of rates on sand, from Columbus, Ga. and Junction City, Ga., to destinations on the Central of Georgia Railroad, north of Newnan, Ga., between Newnan and the Tennessee state line.

Columbus, Ga., is located southwest of Atlanta, on the Central of Georgia Railroad; whereas, Junction City, Ga.,

is located on the Atlanta, Birmingham & Coast Railroad, south of Atlanta. The distance from Columbus, Ga., to Cedartown, Ga., is 144 miles, and from Junction City, Ga., 142 miles. The maximum rate fixed by the Georgia Commission from both Columbus and Junction City to Cedartown is 120 cents. This is also the scale rate fixed in docket 17517 for the distance from Columbus to Cedartown, but docket 17517, if applicable thereto would fix a rate from Junction City to Cedartown of 135 cents, creating a discrimination in favor of Columbus of 15 cents per ton. (Rec. 2039.)

[fol. 636] The distance from Columbus to Clem, Ga., is 97 miles, and from Junction City, Ga., 95 miles. The rate fixed by the Georgia Commission from both Columbus and Junction City to Clem is 100 cents. This is also the scale rate fixed in docket 17517 for the distance from Columbus, but docket 17517 would produce a rate of 115 cents from Junction City, or a discrimination against Junction City of 15 cents per ton. These discriminations are reflected throughout the exhibit.

Mr. Burchmore: We offer exhibit 171-B consisting of two pages, and ask that it be received.

Mr. Gwathmey: Same objection.

Exam. Waters: Received subject to the objection.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 171-B, Witness Price.") (Rec. 2040.)

My exhibit No. 172-B is a statement of rates on crushed stone from Stockbridge and Lithonia, Ga. to points of destination located on the Southern Railway north of Atlanta, between Atlanta and the Tennessee state line. Stockbridge, Ga., is located on the Southern Railway just south of Atlanta, and Lithonia, Ga. is located on the Georgia Railway east of Atlanta. The junction point in handling this traffic would be Atlanta.

The distance from both Stockbridge and Lithonia to Byrd, Ga. is 80 miles, and the rate fixed by the Georgia Commission from both points to Byrd is 90 cents. It will be noted that this is also the rate that would apply under docket 17517 from Stockbridge, Ga., but if the 17517 rate [fol. 637] was applied from Lithonia the rate would be 105

cents, or a discrimination against Lithonia of 15 cents per ton.

The distance from both Stockbridge and Lithonia to Cohutta, Ga., is 145 miles, and the rate prescribed by the Georgia Commission from both Stockbridge and Lithonia to Cohutta is 120 cents. This is also the rate from Stockbridge to Cohutta under docket 17517. However, from Lithonia to Cohutta, docket 17517 would make a rate of 135 cents, or create a discrimination against Stockbridge of 15 cents per ton. (Rec. 2041.)

These discriminations against Lithonia are reflected throughout the exhibit.

Mr. Burchmore: We offer exhibit 172-B in evidence and ask that it be received.

Mr. Gwathmey: We note the same objection.

Exam. Waters: The objection is noted.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 172-B, Witness Price.")

My exhibit No. 173-B is a statement of rates on crushed stone from Stockbridge and Lithonia, Ga., to Southern Railway stations northeast of Atlanta, between Atlanta and the South Carolina state line, this exhibit showing the present rates as prescribed by the Georgia Commission, compared with the rates prescribed in I. C. C. Docket 17517.

It will be noted that Cornelia, Ga. is 97 miles from Stockbridge and 102 miles from Lithonia. The rate fixed by the Georgia Commission from both Stockbridge and Lithonia [fol. 638] to Cornelia under the 17517 scale. However, if the full 17517 scale applied from Lithonia, Ga. the rate would be 125 cents, or a discrimination against Lithonia of 25 cents per ton. (Rec. 2042.)

The distance to Gainesville, Ga. from Stockbridge is 72 miles, and from Lithonia, 77 miles. The present Georgia rate from both Stockbridge and Lithonia to Gainesville is 90 cents per ton, and this is also the rate from Stockbridge to Gainesville under docket 17517. However, docket 17517 would make the rate from Lithonia 105 cents, or a discrimination against Lithonia of 15 cents per ton.

These discriminations against Lithonia would be created under docket 17517 to all this territory.

Mr. Burchmore: We ask that this exhibit be received as exhibit 173-B.

Mr. Gwathmey: Same objection.

Exam. Waters: Same ruling.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 173-B, Witness Price.")

My exhibit No. 174-B is a statement of the present rates on crushed stone from Stockbridge and Lithonia to points of destination on the Southern Railway south of Atlanta, between Atlanta and Fort Valley, compared with the maximum rates prescribed in docket 17517. (Rec. 2043.)

This exhibit is similar to my previous exhibits and shows the discriminations against Lithonia in favor of Stockbridge if the docket 17517 maximum rates were made to apply as minimum rates in Georgia.

[fol. 639] Mr. Burchmore: We offer exhibit 174-B in evidence and ask that it be received.

Mr. Gwathmey: We note the same objection upon the ground of irrelevancy.

Exam. Waters: Same ruling.

(The same was thereupon received in evidence, marked "GPSC Exhibit No. 174-B, Witness Price.")

My exhibit No. 175-B is a statement of the present rates on sand from Rollo and Junction City, Ga. to points of destination on the Southern Railway northeast of Atlanta, between Atlanta and the South Carolina state line.

Rollo, Ga. is located on the Southern Railway south of Atlanta, between Atlanta and Fort Valley. Junction City, Ga. is located on the Atlanta, Birmingham & Coast Railroad due south of Atlanta.

The distance from Rollo to Suwanee, Ga., is 127 miles and from Junction City, 132 miles. The present rate fixed by the Georgia Commission to Suwanee from Rollo is 110 cents and from Junction City, 120 cents. (Rec. 2044.)

I. C. C. docket 17517 would fix a rate from Rollo to Suwanee of 120 cents, and from Junction City to Suwanee of 135 cents or a discrimination against Junction City of 15 cents per ton.

The distance from Rollo to Gainesville, Ga., is 149 miles, and from Junction City 154 miles. The present rate fixed

by the Georgia Commission from both Rollo and Junction [fol. 640] City to Gainesville is 120 cents. This is also the maximum rate that would apply from Rollo to Gainesville under docket 17517. However, docket 17517 would fix a maximum rate from Junction City to Gainesville of 140 cents, whereas the maximum rate under docket 17517 from per ton.

Attention is directed to the rates to Tugalo, Ga., the distance from Rollo being 192 miles and from Junction City, 197 miles. The present rate fixed by the Georgia Commission from both Rollo and Junction City to Tugalo is 140 cents, whereas the maximum rate under docket 17517 from Rollo to Tugalo would be 135 cents, or five cents less than the present Georgia rate.

On the other hand, docket 17517 would fix a maximum rate from Junction City to Tugalo of 145 cents, or create a discrimination against Junction City of 10 cents per ton, notwithstanding the fact that the present rate from Rollo to Tugalo would be reduced five cents per ton. (Rec. 2045.) These discriminations are reflected th-oughout this exhibit. Junction City to Atlanta shown as joint line haul should really be a single line 104. J 101 is the short line distance and is correct. The rate that would actually apply would be $1.10 and would not affect the rest of it at all. The distance from Rollo to Atlanta should be S-95.

(The same was thereupon received in evidence, subject to objection, marked, "GPSC Exhibit No. 175-B, Witness Price.") (Rec. 2046.)

My exhibit No. 176-B is a statement of the present rates on crushed stone as compared with rates under docket 17517 from Perry, Ga. and Oglesby, Ga. to points of destination [fol. 641] on the Central of Georgia Railroad east of Macon, on the line between Millen, Ga. and Savannah, Ga.

Perry, Ga. is located on a branch line of the Central of Georgia Railroad out from Fort Valley, just west of Macon. Oglesby, Ga. is located on the Seaboard Air Line Railway northeast of Atlanta, near Elberton, Ga. These quarries come in competition with each other, and traffic from Oglesby, Ga. to these points of destination should be delivered to the Central of Georgia Railroad at Athens, Ga. Perry was not names as a point of origin in Appendix A

to the decision of the I. C. C. in 17517. It has become a producer since that time, less than two years ago. (Rec. 2047.)

This exhibit shows the same differences and discriminations as are illustrated in my previous exhibits.

(The same was thereupon received in evidence subject to objection, marked, "GPSC Exhibit No. 176-B, Witness Price.")

My exhibit No. 177-B is a statement of the present rates on sand, compared with rates under docket 17517, from Columbus, Ga. and Howard, Ga., to points of destination on the Seaboard Air Line Railway on its Savannah and Montgomery division, between Cordele, Ga. and Savannah, Ga.

Columbus, Ga. is located 116 miles southwest of Atlanta, and is served by the Seaboard Air Line Railway. Howard, Ga., is located on the Central of Georgia Railroad, west of Macon, on the line between Fort Valley, Ga. and Columbus. The junction point on business moving from Howard to the points of destination shown, would be Americus, Ga. or Cordele, Ga.

[fol. 642] It will be noted that the distance from Columbus to Alamo, Ga. is 164 miles, and from Howard, Ga. 149 miles.

The present Georgia rate fixed by the Georgia Commission from Columbus to Alamo is 130 cents, and from Howard, 120 cents. If the maximum rates in docket 17517 were applied the rate from Columbus to Alamo would be 130 cents, or the same as the present Georgia rate, but from Howard, Ga. the rate would be 135 cents, or five cents per ton higher than the rate from Columbus, although the distance is 15 miles less. The distance from Columbus to Aults is 140 miles, and from Howard 134 miles. The present Georgia rate from both Columbus and Howard to Aults is 120 cents. This is also the maximum rate from Columbus to Aults under docket 17517, but if docket 17517 rates were applied from Howard, Ga. the rate would be 135 cents, or a discrimination against Howard of 15 cents per ton, notwithstanding the distance from Howard to Aults is 15 miles less than from Columbus. These discriminations are reflected throughout this exhibit.

Mr. Burchmore: We offer this exhibit in evidence as 177-B and ask that it be received.

Mr. Gwathmey: Same objection.
Exam. Waters: Same ruling.

(The same was thereupon received in evidence, marked, "GPSC Exhibit No. 177-B, Witness Price.") (Rec. 2049.)

Mr. Burchmore: In offering the series of exhibits which runs from 169-B to 177-B, it is not my contention that the [fol. 643] Interstate Commerce Commission has original or affirmative or direct jurisdiction to enter any order correcting or purporting to correct an unjust discrimination in violation of the principle expressed in section 3 of the Act, or to reduce an excessive rate in violation of the principle which is expressed in section 1 of the interstate commerce act; but it is my contention that in considering the order to be entered in a section 13 proceeding, or in a section 3 proceeding, which involves interstate rates on the one hand and intrastate rates on the other hand, it is not only the power but the duty of the Interstate Commerce Commission to consider the effect upon all shippers, state and interstate, of the order contemplated to be entered.

Mr. Cotterill: What is it you mean when you speak of "effect," Mr. Burchmore?

Mr. Burchmore: The resulting rates and relationships, and all other effects as far as that is concerned—the resulting rates and relationships and any other effects of the order.

Mr. Cotterill: Well, I don't know that there is any good in further discussing it.

Mr. Burchmore: I wanted to make it clear what my position was, and in addition the position that it supports the reasons or some of them assigned by the Georgia Commission in its order of March 13, 1928. (Rec. 2050.)

[fol. 644] Atlanta, Ga., November 28, 1928.

Before Exam. Waters

E. M. Price resumed the witness stand.

My exhibit No. 178-B is a statement of rates on sand, gravel and crushed stone to Atlanta, Ga. from various points of origin in Georgia, Alabama and Tennessee.

This exhibit shows the present rates as published by the carriers, also the maximum rates that would apply under docket 17517, and also what the rates would be under the Georgia scale as fixed by the Georgia Commission.

Particular attention is directed to the fact that the rate published and being charged from Montgomery, Ala. to Atlanta, is less than the maximum rate prescribed in docket 17517. (Rec., 2052.)

In my previous exhibits I have shown the gradation of the docket 17517 scale as compared with the Georgia scale prescribed by the Georgia Commission. At the distance between Montgomery and Atlanta the 17517 scale is graded 175 miles and over 150 miles, and 200 miles and over 175 miles. The maximum rate fixed in docket 17517 for 175 miles and over 150 miles is 130 cents, and for 200 miles, and over 175 miles, 135 cents.

The distance from Montgomery to Atlanta as published by the carriers at the time this exhibit was prepared was 178 miles. However, this tariff, Atlanta & West Point I. C. C. A-80, has been amended, and the present tariff distance is 176 miles. In any event, the maximum rate prescribed by the Interstate Commerce Commission in its docket 17517 from Montgomery to Atlanta, is 135 cents, although the rate published and being charged is 130 cents.

Jackson's Lake, Ala., Prattville Junction, Ala., Coosada, [fol. 645] Ala. and Litylene, Ala. are all located in the vicinity of Montgomery, Mitylene being located on the Seaboard Air Line and the other points on the Louisville & Nashville Railroad.

It will be noted from this exhibit that under the present adjustment these producing points have a disadvantage over Montgomery of 15 cents per ton; whereas, if the Georgia scale was applied from all this territory the rate from all of this group would be the same. (Rec., 2053.)

Attention is also directed to the fact that from Chehaw, Ala. and Chattanooga, Tenn. to Atlanta, the rates under the Georgia scale are the same as the present rates and the maximum rates that would obtain under docket 17517.

Mr. Burchmore: We offer this exhibit in evidence and ask that it be received, and in offering it I direct the Examiner's attention to the fact that it has no bearing on the contentions and matters that were covered by exhibits 169-B to 177-B, offered and received yesterday.

(Thereupon the statement was offered and received in evidence, without objection, and marked "GPSC Exhibit No. 178-B, Witness Price.")

Under the Georgia law, all rates prescribed by the Georgia Public Service Commission are maximum rates, and under the rules of the Georgia Commission may be reduced voluntarily by the carriers, provided, of course, in making such reductions, discriminations are not created. Generally speaking, the carriers have not reduced the rates applied in Georgia on sand, gravel and crushed stone below the maximum scale which was authorized by the Georgia Commission, effective May 1, 1928. I do recall in one instance [fol. 646] where the rate from Junction City, Ga. to Atlanta is published by the Atlanta, Birmingham & Coast Railroad in connection with the Atlanta & West Point Railroad via LaGrange below the full scale rate for the distance, and on the basis of the rate applying via the direct line of the Atlanta, Birmingham & Coast Railroad. The Central of Georgia Railroad also publishes rates from Junction City, Ga. to Atlanta the same as published by the Atlanta, Birmingham & Coast, the latter line being the direct line.

The rates fixed by the I. C. C. in docket 17517 are maximum rates, and our investigation shows that in many instances the carriers are publishing lower rates than the scale. (Rec., 2056.) As an illustration, the Atlanta, Birmingham & Coast Railroad, in connection with the Atlanta & West Point, publishes from Birmingham to Atlanta a rate of 130 cents per ton for a distance of 241 miles.

Mr. Cotterill: Mr. Burchmore, he started out and said, "as an illustration." The question I asked you is, is he going to present by way of exhibits the very many cases that he speaks of in his general statement, or is he going to present certain things? (Rec., 2057.)

Mr. Burchmore: I get the point of Mr. Cotterill's objection. I am willing to put it this way: Let the witness give his instances, let the record show that at this point you do not concede that they are anything but instances. If they are true, all right, they may be the only instances there are. When he has concluded with his instances, I shall ask him then to make a statement whether they are instances or ilustrative, and then we can deal with that question.

Mr. Cotterill: That will be all right. (Rec., 2058.)

[fol. 647] Q. Now, will you continue.

A. Whereas, the rate under the full 17517 joint line scale for this distance would be 160 cents.

The Atlanta, Birmingham & Coast Railroad also publishes from Birmingham to Atlanta a rate of 130 cents per ton to apply over its own line for a distance of 275 miles, although the 17517 scale for this distance will be 160 cents as maximum. This same line publishes from Birmingham to Union City, Ga. for a distance of 253 miles, 140 cents; whereas, the maximum rate under the 17517 scale is 150 cents. (Rec., 2059.)

A. The Atlanta, Birmingham & Coast Railroad publishes from Birmingham to Thomasville for a distance of 408 miles a rate of 175 cents; whereas, the full rate under the 17517 scale is 195 cents. This rate of 175 cents also applies to stations on the Atlanta, Birmingham & Coast Railroad north of Thomasville to Omega, Ga., except to Murphy and Rathasay, where the rate is made 180 cents, the distances from Birmingham to these stations ranging from 362 to 408 miles. The rates under the full 17517 scale would be 185 cents to all of these stations except from Thomasville to Dillon, and the rate to all stations between Thomasville and Dillon is 195 cents. It will be noted that the rates at Rathasay and Murphy are fourth section departures.

The distance from Birmingham to Savannah via the Louisville & Nashville Railroad to Montgomery and the Atlantic Coast Line beyond is 509 miles, and these lines publish a rate from Birmingham to Savannah of 200 cents, and this same rate is made to apply to local stations on the Atlantic Coast Line west of Savannah, to Fleming, Ga., a distance of 485 miles, whereas the 17517 scale for that mileage is 215 cents per ton.

[fol. 648] The distance from Birmingham to Ludowici, Ga., via the Louisville & Nashville and Atlantic Coast Line at Montgomery is 463 miles, and the rate published from Birmingham to Ludowici is 190 cents, although the 17517 scale provides a rate of 210 cents.

This same condition exists in connection with the rates from Birmingham to practically all Atlantic Coast Line stations in Georgia on its line between Montgomery and

Savannah. The rate published from Birmingham to Folkston, Ga., is 190 cents, although the rate authorized in docket 17517 in connection with Louisville & Nashville and Atlantic Coast Line via Montgomery is 210 cents. (Rec., 2061.)

The distance from Birmingham to Putney is 358 miles, via the Louisville & Nashville and Atlantic Coast Line at Montgomery, whereas the rate under docket 17517 is 180 cents. This same condition applies at all stations on the Atlantic Coast Line between Albany and Thomasville, Ga.

What I have just said in regard to rates published from Birmingham to stations in Georgia on the Atlantic Coast Line also applies with regard to rates published by the Central of Georgia Railroad from Birmingham to stations in Georgia on that line. The distance from Birmingham to Statesboro, Ga., located on the Central of Georgia Railroad east of Macon, between Dover and Brewton, is 402 miles, and the rate published by the Central of Georgia is 185 cents; whereas the 17517 scale is 195 cents. The distance from Birmingham to Adrian, via the Central of Georgia is 456 miles, and the rate published is 190 cents, although the 17517 scale makes a rate of 205 cents.

[fol. 649] What applies to Statesboro and Adrian applies to all stations on the Central of Georgia Railroad, between Dover and Brewton, the 17517 scale being reduced from five cents to 15 cents per ton. The actual rate is less then the 17517 maximum scale rate for the distance stated.

Eatonton, Ga. is located on the Central of Georgia Railroad northeast of Macon, on the line between Gordon and Covington, Ga. The distance from Birmingham to Eatonton via the Central of Georgia Railroad is 317 miles, the rate published is 160 cents; whereas the rate authorized under docket 17517 is 165 cents.

Willard, Ga. is located on this same line, and the distance from Birmingham is 321 miles. The rate published is 160 cents, although docket 17517 authorizes a rate of 175 cents. (Rec., 2065.)

Mansfield, Ga. is also located on this line, and the distance from Birmingham is 325 miles, the rate published by the Central of Georgia is 150 cents, although docket 17517 authorizes rate of 175 cents.

This condition exists at all stations on the Central of Georgia between Gordon and Covington, that is, the rates

published are less than the rates authorized in your docket 17517. (Rec., 2066.)

The distance from Birmingham to Atlanta via the Central of Georgia Railroad is 304 miles, and the published rate in Glenn's Tariff from Birmingham to Atlanta via the Central of Georgia Railroad is 130 cents per ton and the docket 17517 scale rate for that distance is 165 cents. Hampton, Ga. is a local station on the main line of the Central of Georgia R. R. between Atlanta and Macon. According to the Central of Georgia Tariff, the distance from Bir- [fol. 650] mingham to Hampton is 271 miles and the published tariff rate in Glenn's Tariff over the Central of Georgia R. R. from Birmingham to Hampton is 145 cents, while the docket 17517 maximum rate for a distance of 271 miles is 160 cents. (Rec., 2070.)

Q. Is what you have said with regard to the distances and the rates to Hampton, Ga. illustrative of the rates and distances to stations on the Central of Georgia Railroad on its line between Macon and Birmingham, as to the difference between the docket 17517 full scale rate and the rate that is published in the tariff?

A. You mean between Macon and Atlanta?

Q. To destinations between Macon and Atlanta?

A. From Birmingham?

Q. Yes.

A. It is. (Rec., 2071.)

By Mr. Walker:

Q. From your statement, Mr. Price, do you mean that the rate that applies over the short line from Birmingham to Atlanta also applies via the route of the Central of Georgia?

Mr. Burchmore: To where?

Mr. Walker: To Atlanta.

The Witness: That is true.

Q. It applies via the Central of Georgia?

A. Yes sir.

Q. For what distance?

A. For a distance of 271 miles.

Mr. Caskie: The tariff does not permit it. (Rec., 2073.)

[fol. 651] By Mr. Burchmore:

I can take Glenn's Tariff and give authority for my statement of the rate from Birmingham to Atlanta via the Central of Georgia. J. H. Glenn's I. C. C. A-655 contains a specific rate on sand and gravel and so forth from Birmingham and Atlanta and the rate specifically in that tariff is 130 cents per ton. The Central of Georgia R. R. is a party to that Tariff. (Rec., 2073.)

I find in that Tariff an exception against the application of that specific rate from Birmingham to Atlanta via the Central of Georgia, that that rate would not apply over routes having distances in excess of 255 miles. The distance from Birmingham to Atlanta is 304 miles.

Mr. Burchmore: The witness was erroneous in his previous statement that the rate was 130 cents to Atlanta.

I find that the Glenn Tariff states that the rate on a carload of sand or gravel moving over the Central of Georgia R. R. all the way from Birmingham to Atlanta would be the scale rate, which is 165 cents. The distance of the Central of Georgia from Birmingham to Athens is 364 miles. (Rec., 2074.)

The rate published from Birmingham to Athens over the Central of Georgia is 150 cents and the maximum scale rate under docket 17517 for 364 miles is 185 cents.

The distance from Birmingham to Shadydale, Ga. is 313 miles, and this station is intermediate on the Central of Georgia between Birmingham and Athens, and the rate published is 160 cents, although docket 17517 authorizes 163 cents.

[fol. 652] It will be noted there is a fourth section departure at this point, and this condition also applies at all stations on the Central of Georgia between Shadydale and Athens, and in each instance the rates published are from five cents to 35 cents less than the rates authorized in docket 17517.

What I have just said in regard to the rates applying to the Central of Georgia on its line between Macon and Athens also applies on its line between Barnesville and Thomaston, Ga., a branch line just north of Macon. The distance from Birmingham to Thomaston is 295 miles, the rate published being 150 cents, although the rate authorized under docket 17517 is 165 cents. (Rec., 2075.)

We find the same condition existing on the line of the Central of Georgia on its line between Griffin and Chattanooga. On this line the distance from Birmingham to Mandeville, Ga. via the Central of Georgia is 268 miles, the rate published 125 cents, although docket 17517 authorizes a rate for this distance of 160 cents, the rate published being 35 cents per ton less than the rate authorized.

The distance from Birmingham to Breman, Ga. via the Central of Georgia is 274 miles, and the rate published is 110 cents, although the rate authorized by docket 17517 for this distance is 160 cents.

This same condition exists at all stations on this division.

By Mr. Cotterill:

Q. Mr. Price, where you just spoke a moment ago of rate authorized, did you mean in that connection authorized for that distance?

A. Yes sir.

By Mr. Burchmore:

Q. Wherever you say authorized, you mean for that distance?

[fol. 653] A. Yes sir. (Rec., 2076.)

A. Pretross, Ga. is a local station on the Georgia & Florida Railroad, which is a relief line. The distance from Birmingham to Petross via the Central of Georgia to Midville, and the Georgia & Florida, is 403 miles. The rate published is 180 cents, although the rate authorized in docket 17517 for this distance is 200 cents.

The distance from Birmingham to Crenshaw, Ga., which is also a local station on the Georgia & Florida Railroad, is 482 miles via the Central of Georgia and the Georgia & Florida. The rate published is 180 cents, although docket 17517 authorizes a rate for this distance of 215 cents.

In other words, the rate published via this route is 35 cents per ton less than the rate authorized in docket 17517 for the distance.

This same condition exists to practically all stations on the Georgia & Florida Railroad, the rates published being 10 cents to 35 cents per ton less than the rate authorized in docket 17517 for the distance. (Rec., 2077.)

By Exam. Waters:

Q. Does what you have just been giving here show illustrations generally speaking of where longer routes are meeting the rates made by short routes?

A. I would put it this way, Mr. Examiner, that the short line distance, that is the short distance may be computed via another route. (Rec., 2078.)

Q. Which determines the rate?

A. Which possibly would determine the rate.

By Mr. Gwathmey:

Q. It must determine the rate, don't you mean?

A. But the distances which I am giving are the distances via which the rates are published.

Exam. Waters: Generally by fourth section relief, in a great many instances. If everybody admits generally, Mr. [Vol. 654] Burchmore, that that is what he is showing here, and it is generally admitted that that condition exists, then why don't you confine your testimony more to pointing out instances where the scale is actually violated?

Mr. Burchmore: Well, I discussed with Mr. Price, some general testimony, and we rather agreed that the statements he would make and the conclusions he would draw be objected to, and to avoid any such objection and to be precise, and not to drawing conclusions, I am having him here give instances of certain things where certain facts are true. Now, any argument to be made about that on either side can be made from those facts. There are in these instances that he is giving other things than that covered by the suggestion of the other side. I do not want to burden the record. Mr. Price prepared these memoranda, they are his own instances. (Rec., 2079.)

Mr. Cotterill: Mr. Burchmore, would this be any aid, having before you the stipulation of counsel that what you have given fully illustrates the fact that under the rule of rate making prescribed by the Commission in its interstate decision, there are hundreds, perhaps even thousands of instances in which the maximum scale is departed from over routes which are longer than the routes via which the distances are computed? Now, with that before you wouldn't it be possible for you to accept that stipulation

as proving that fact? Now, if in addition there is something else that you wish to prove, then have your illustrations directed to those other things.

Mr. Burchmore: I will make two suggestions in the interest of saving time, either of two suggestions. With your indulgence I would like to take three or four minutes to check over our other illustrations with Mr. Price, to see whether there is something that we ought to get in.

[fol. 655] Exam. Waters: I think that would be advisable. We will take a recess for that purpose.

(Short recess.)

Mr. Burchmore: Mr. Examiner, I would like to have it understood in any form that may seem reasonable to the examiner, that within a short time Mr. Price will file with the Commission, or I will file for him and serve on the other parties, any corrections he has made with respect to this feature of the case which upon recheck of the tariffs and the mileages he finds necessary. I do not think it necessary to ask it except in the interest of fairness I should do so, and have it understood that on this feature of the case and our showing as a whole that the carriers or opposing parties may within a reasonable time present an exhibit or statement in rebuttal or correction of this feature of the case.

Mr. Gwathmey: You mean the carriers should have that opportunity after Mr. Price has submitted his statement?

Mr. Burchmore: Yes sir.

Mr. Gwathmey: That suits me all right.

Mr. Walker: It is understood that the corrected statement furnished by Mr. Price will only cover matters about which he has given testimony.

Mr. Burchmore: It will be purely corrective of any misstatement he may have made here, and I would hope that there is nothing to file.

Exam. Waters: You are going to file a statement, if you find errors, is that it? (Rec., 2082.)

Mr. Burchmore: If he finds that he has misstated facts as to these situations.

[fol. 656] Exam. Waters: Mr. Price, you will be given 10 days in which to get that statement to the Commission. The carriers and other parties who wish to file a rebuttal statement will have 10 days from the time of the filing with the Commission of Mr. Price's statement.

My exhibit No. 179-B is a statement of rates on sand and gravel from Montgomery, Ala. and Mitylene, Ala. to Thomasville, Ga. and stations on the Atlantic Coast Line Railroad between Albany and Thomasville.

My previous exhibits have shown the inconsistency and discriminations that would be created between Georgia shipping points if the maximum rates in docket 17517 were made to apply in Georgia. (Rec., 2084.)

The purpose of this exhibit is to show the inconsistencies and the fourth section departures that are now being practiced on interstate traffic.

This exhibit also shows that if the Georgia scale was applied these inconsistencies and fourth section departures would be removed.

The single line distance of the Atlantic Coast Line Railroad from Montgomery to Thomasville, Ga. is 211 miles, and the rate is 140 cents. The short line distance from Montgomery to Thomasville is 207 miles, in connection with the Central of Georgia and the Seaboard Air Line Railway through Albany in connection with the Atlantic Coast Line, and it will be noted that the Georgia scale for this distance is also 140 cents.

The distance from Montgomery to Petty, Ga., Joint Line in connection with the Seaboard Air Line and Atlantic Coast Line, through Albany, is 179 miles, and the rate published is 145 cents, or five cents higher than the rate to [fol. 657] Thomasville, Ga., notwithstanding the fact that Petty is intermediate between Montgomery and Thomasville via this route, and the distance is 28 miles less, and a rate of 140 cents is being published by the Seaboard Air Line from Montgomery to Thomasville. (Rec., 2084.)

The distance from Montgomery to Albany via the Atlantic Coast Line Railroad is 269 miles, and the Atlantic Coast Line publishes a rate of 130 cents. Thomasville is intermediate between Montgomery and Albany via the route of the Atlantic Coast Line, and a rate of 140 cents is published from Montgomery to Thomasville.

Mitylene, Ala. is located on the Seaboard Air Line Railroad, nine miles east of Montgomery, and is intermediate between Montgomery Albany and Thomasville. The Seaboard Air Line Railway publishes a rate of 140 cents from Montgomery to Thomasville, and from Mitylene, Ala. the intermediate point, publishes a rate of 150 cents. These

fourth section departures are reflected at all points on this line between Thomasville and Hanzel, Ga., inclusive.

It will be noted that if the Georgia scale was applied these inconsistencies and fourth section departures would not exist.

Mr. Burchmore: We offer exhibit 179-B, and ask that it be received.

Mr. Gwathmey: If the Examiner please, I wish to note an objection to the receipt of this exhibit upon the ground that insofar as it purports to show and is offered for the purpose of showing discriminations as between particular interstate shipping points and destinations, that matter is not at issue in this proceeding under the present state of the pleadings. (Rec., 2085.)

[fol. 658] Exam. Waters: Your objection is fully noted.

Mr. Cotterill: Of course, I am concurring in that objection.

Exam. Waters: The exhibit is received subject to the objection.

(The same was thereupon received in evidence subject to objection, marked "GPSC Exhibit No. 179-B, Witness Price.")

A. My exhibit No. 180-B is a statement of rates on sand and gravel from Montgomery, Ala., to destinations on the Atlanta, Birmingham & Coast Railroad, between Cordele and Fitzgerald, Ga., inclusive. Both the Seaboard Air Line Railway and the Atlanta, Birmingham & Coast Railroad serve Fitzgerald, Ga., which is just south of Cordele, Ga.

The rate from Montgomery to Fitzgerald is 140 cents, whereas it will be noted that the rates to all intermediate stations from Westwood to McKenzie, Ga. are higher than the rate to Fitzgerald, which is a departure from the fourth section, and a discrimination against these intermediate points in favor of Fitzgerald.

At Westwood the distance from Montgomery is 205 miles, and the rate 150 cents, whereas, at Fitzgerald the distance is 206 miles, and the rate 140 cents, or 10 cents less than to Westwood. (Rec., 2086.)

Mr. Burchmore: We offer exhibit 180-B in evidence, and ask that it be received.

Mr. Gwathmey: We make the same objection.
Exam. Waters: Same ruling.

(The same was thereupon received in evidence, subject to objection, marked "GPSC Exhibit No. 180-B, Witness Price.") (Rec., 2087.)

The order of the Georgia Commission entered March 13, 1928, does not prescribe any formula for arriving at distances. It is a maximum scale prescribing rates for the distances shown in the scale. (Rec., 2087.)
[fol. 659] The order and the rule of the Georgia Commission make no provision for the application of the scale as prescribed to the shortest rail distances by which traffic can be moved without transfer of lading in order to determine the rate that shall apply. (Rec., 2088.)
Generally speaking the rates within the state of Georgia for the transportation of these materials are not published as specific point to point rates. The Tariffs do contain a rule defining *the* how the scale will be applied. That is, what mileage may govern. Yes sir, the Tariff is filed with the I. C. C. and is Agent's Glenn's Tariff I. C. C. A-529, Freight Tariff No. 33. The rules I consider applicable to your question are Note 2 at page 16-A. (Rec., 2089.)

Mr. Burchmore: May that rule or this paragraph be read into the record? I raised the question with the Examiner and counsel. Is it desirable to read this into the record, or may we rely on the tariffs?
Exam. Waters: I think it is sufficient to rely on the tariffs.
Mr. Burchmore: Very well.

By Mr. Burchmore:

Q. Mr. Price, Mr. Crane calls attention to the fact that the rule you have referred to appears to have been carried forward with possible modification on page 4 of supplement 16 to that tariff. Have you checked it to see whether the rule is substantially altered or not?

Mr. Burchmore: I think if the record calls attention to that fact, we may take it as understood that the reference is to the correct rule.

Q. What, it any, opinion have you as to the reasonableness of the Interstate Commerce Commission's scales of

maximum rates known as the 17517 scales, as applied to the present and future movement of sand, gravel, crushed stone, and so forth, to all—from points in the state of [fol. 660] Georgia to points in surrounding states, and in the reverse direction, interstate movements, and what, if any, facts have you to present in support of that opinion?

Mr. Walker: The question is objected to on the ground that the reasonableness of the interstate scale is not in issue in this proceeding.

Mr. Caskie: Complainants concur in that objection.

Mr. Walker: We certainly are not going into the reasonableness of the scale that has been prescribed by the Commission.

Mr. Burchmore: I would say, Mr. Examiner, if you feel that the question is objectionable on that ground, and would be inclined to sustain it, I would not ask for the State of Georgia that you refrain from making that ruling out of any comity or indulgence to us. I would like a ruling from your Honor on it based on your interpretation of the case and the issues, and so forth, because if you permit it to be answered our testimony will be perhaps rather extensive.

Exam. Waters: I realize the importance of the question. The final determination of whether it is pertinent or not would have to be answered by the Commission. For that purpose and for what it is worth here, I am going to let it be answered.

Mr. Walker: We reserve our exception. (Rec., 2091.)

The Witness: It is my opinion that the rates authorized by the Interstate Commerce Commission in its docket 17517 on sand, gravel, crushed stone, and so forth, are, to say the least, very full maximum rates to be applied interstate in this territory. This record shows the rates that were in effect prior to April 1, 1925, at the time the Georgia Commission first revised its rates in Georgia, and contains exhibits showing the rates that were voluntarily established [fol. 661] by the carriers between some of the most important consuming points of these materials, and these voluntarily established rates were far below the rates which have been prescribed in docket 17517.

I also feel, and it is my opinion, that any schedule of rates that will fix a rate for a distance of 150 miles or 160 miles, and is so full that it warrants the carrier in han-

dling that traffic for a distance of 200 miles or a much greater distance, certainly represents what I consider a full maximum rate. The rates fixed by the Commission in this docket 17517 are to be applied via the route where carload traffic may be transferred or interchanged without the transfer of lading, and is then inflated so as to permit the movement of that traffic via longer routes than this short or rate making route. (Rec., 2092.)

[fol. 662] Mr. Burchmore: One behalf of the Public Service Commission of Georgia, I respectfully ask that the defendants shall furnish, in order that it may be incorporated in the record as a part of our case, a statement of the tonnages of these materials moving during a representative period in 1928, but not less than four months, by each of the railroad routes separately stated, from Montgomery to Atlanta, and will use those tonnages when they are furnished for the computation of the revenues on the actual rates and what the revenues would be if the scale rates for the distances of the respective routes were applied, so that as a part of my request I leave it optional with the carriers whether they show the actual revenues in addition to showing the tonnages. I ask for that information from the defendants.

Mr. Gwathmey: Our objections to furnishing that information have been stated heretofore in the record, Mr. Examiner. I suppose it is unnecessary to repeat that at this point.

Mr. Cotterill: I did not do so before, but since counsel is formally renewing his request, I suppose I should not longer refrain from saying on behalf of the Montgomery shippers whom I represent, we give notice to the carriers that we would regard the production of that information as violative of the Interstate commerce act, and should decline to permit them to make it available. (Rec., 2093.)

Mr. Burchmore: For how many shippers at Montgomery do you speak?

Mr. Cotterill: At this time the Roquemore Gravel Company and the Alabama Sand & Gravel Company.

Mr. Burchmore: Would you object if the figures were, [fol. 663] as the request calls for, simply the totals of all the shipments of all of the shippers from Montgomery?

Mr. Cotterill: Yes.

Mr. Burchmore: Without naming the shippers, and with no details of any character, but I want to know how many moved over the West Point route, how many moved over the second route, how many moved over the third route, how many moved over the fourth route, and the other routes between the cities, where the distances on the different routes are of course different.

Mr. Cotterill: I would have no objection from my point of view to the proportion being given, but not the absolute tonnages. (Rec., 2094.)

Mr. Burchmore: I want the absolute tonnage.

Mr. Caskie: Speaking for the only other shipper at Montgomery, I concur in what Mr. Cotterill has said.

Exam. Waters: What were you asking for, Mr. Burchmore, to Atlanta, or all points in Georgia?

Mr. Burchmore: The answer would be something like this: The answer would be that during the months of January to April, inclusive, or June to October, inclusive, a four months period, the Atlanta & West Point and Western of Alabama route handled 196,000 tons of sand and gravel from Montgomery to Atlanta, or 490,000 tons, or whatever the figure is, and in addition they may state that the revenue thereon was so many thousand dollars, or refrain from stating that, as they choose. They would then state that the Central of Georgia Railroad during that period, from Montgomery to Atlanta, handled a total of so many tons; and so on for each of the routes that handled any substantial tonnage.

Exam. Waters: Personally I have never seen a great deal of objection to furnishing that information, but the carriers and Mr. Cotterill's clients do not feel that they [fol. 664] should do it. I am not going to require them to do it, or attempt to require them.

Mr. Burchmore: It will then be my purpose to file a formal written motion with the Commission that these defendants be directed to furnish the information. (Rec., 2095.)

Exam. Waters: I understand that they are willing to furnish the movement from Montgomery, the volume of movement to all points in Georgia.

Mr. Gwathmey: I so stated on yesterday. Of course, that is subject to any objection that the Montgomery shippers

might make. I don't know whether they would object to that or not.

Mr. Cotterill: I think there would be no objection to that. I have not had a chance to discuss it with Mr. Roquemore.

Mr. Burchmore: I have no objection to that being furnished for any railroad, but I am not asking for it, and have no desire to have it.

Mr. Cotterill: Then there will be no need to furnish it. (Rec., 2096.)

[fol. 665] In exhibit 103-B, Mr. Crane, for the Southern Railway, shows the present rates and what purport to be the scale rates from Junction City on the Atlanta, Birmingham & Coast and Central of Georgia Railroads, to Atlanta.

The order of the Georgia Commission authorizes a rate of $1.00 per ton from Junction City to Atlanta for the short line distance of 101 miles, which is the joint line distance, and also the same rate for the single line distance of the Atlanta, Birmingham & Coast for 104 miles. The order of the Georgia Commission permits, but does not require, this rate of $1.00 per ton via the Central of Georgia, single line, for 166 miles, and over the other longer routes referred to on the exhibit. (Rec., 2096.)

Exhibit 103-B shows that the four interested carriers have choosen to publish the rate of $1.00 by all the routes from Junction City to Atlanta.

If the transportation from Junction City to Atlanta happened to be interstate, across a state line, then under the terms of the Interstate Commerce Commission's order in docket No. 17517 the maximum rate that the carriers could charge over any of these routes from Junction City to Atlanta would be $1.00, as I construe that order.

The present rates as show- on this exhibit 103-B, which are lower than the amounts shown as the Georgia scale, have been voluntarily published by the carriers and not required by the Georgia Commission's order.

What I just stated in regard to rates from Junction City on exhibit 103-B also applies as to the rates shown on this exhibit from Howard, Ga. (Rec., 2097.)

[fol. 666] On exhibit 108-B, Mr. Crane shows the distance from Chattanooga, Tenn. to Atlanta as 137 miles, via Nashville, Chattanooga & St. Louis Railroad. But the actual

distance over the Southern Railway from Chattanooga to Atlanta is 153 miles. The docket 17517 maximum scale rate for that distance single line is $1.30.

The exhibit 108-B fails to show this rate or the fact that the Southern Railway hauls sand and gravel from Chattanooga to Atlanta and charges 10 cents less than the 17517 scale would produce for the distance hauled. The present rate from Gaillard, Ga. to Atlanta, intrastate, is on the full maximum of the 17517 scale.

Many illustrations along the same line can be drawn from Mr. Crane's exhibits.

On all of Mr. Crane's exhibits the mileages show in connection with the interstate movements generally appear to have been computed over the shortest route over which carload traffic can be moved without transfer of lading, and in many cases these routes that actually handle the traffic and would short haul the initial and delivering carriers.

For example, on exhibit 130-B, page 4, from Mascot, Tenn. to Mt. Pleasant, Ga. Mr. Crane has used 478 miles, via route shown, which is Southern Railway, Seaboard Air Line, Southern Railway. This could be reached by the Southern Railway direct and undoubtedly the traffic would move single line over the Southern Railway. But the 17517 maximum rate has been figured over the route which short hauls the Southern Railway. (Rec., 2098.)

In connection with exhibit 114-B, Mr. Crane commented on the treatment of Southern Railway; Georgia, Southern & Florida Railway, joint movements as subject to single line rates. He state- that in the application of the 17517 maximum scale of interstate rates the two roads were treated as a single line.

[fol. 667] That is not true of state traffic in Georgia. The United States District Court enjoined the Georgia Commission several years ago from treating the Georgia, Southern & Florida Railway as a part of the Southern Railway System for rate making purposes, and under this injunction the joint line basis is applicable intrastate in Georgia on traffic handled by these two roads.

I am not qualified to testify as to the ownership of the Georgia, Southern & Florida Railway, but they report separately to the Georgia Public Service Commission.

Mr. Burchmore: In respect to this last statement of the witness, we are not in position to offer proof as to the

ownership and management of the Georgia, Southern & Florida Railway at this time, but I ask counsel for the (Rec., 2099) Southern Railway Company whether it is true that the Georgia, Southern & Florida Railway Company is a Georgia Corporation of which somewhere between 50 and 75 per cent of the shares of the capital stock are owned by the Southern Railway Company; that the Georgia, Southern & Florida Railway Company has corporate officers and has a board of directors some of whom may be officers and some of whom may be directors of the Southern Railway System, but who are elected and appointed by the Georgia, Southern & Florida Railway Company as a separate, distinct corporation; and whether it is also true that the Georgia, Southern & Florida Railway Company keeps separate books, separate accounts and a separate organization not intermingled with the Southern Railway Company?

Mr. Walker: The only portion of that question that I can answer is that there is some connection between the Georgia, Southern & Florida and the Southern Railway, the extent of which I do not know. I also know that some of the officers of the Georgia, Southern & Florida are also officers of the Southern Railway Company. (Rec., 2100.)

[fol. 668] Referring to my Exhibit No. 169-B, if there were a plant at Stockbridge and at Norris, both producing cement which each shipped in carloads to destinations shown on that exhibit, including McRae, and if the cement rates prescribed by the I. C. C. for use in Southeastern Territory were applied, the rates would be the same from both points. There is a common scale prescribed by the I. C. C. on cement that applies both joint and single line. These same statements apply to my other exhibits 170-B to 177-B. (Rec., 2101.)

By Mr. Watkins:

From my experience in rate work, I regard it an inconsistency to make the rate of progression from 150 to 175 miles, 10¢, and from 175 to 200 miles, and from 200 to 230 miles, only 5¢; especially since the rate of progression picks up again to 10¢ at 260 and over 230 miles, and then drops again to 5¢ for the 30 mile block between 290 and 320 miles, and then jumps to 10¢. The inconsistency would not be so great if the 5¢ progression were continued on through the

balance of the scale, but in my opinion it is an inconsistency where you have fixed constant mileage blocks. (Rec., 2102.)

Cross-examination.

By Mr. Cotterill:

Mr. Price, I have before me an excerpt from an exhibit introduced in the case by the secretary of your Commission, consisting of a statement of the considerations which prompted the Public Service Commission of Georgia to the course which it took in this matter. I wish very briefly to interrogate you with respect to one phase of it that is within your knowledge. Among other things it is stated that the investigation made by the Georgia Public Service [fol. 669] Commission shows very keen competition between the producers of all the materials at the principal markets, both inter and intrastate, the producers in Georgia coming in direct competition with the producers in Alabama, Tennessee, and South Carolina. Do you of your own knowledge know whether or not that is a fact?

A. Only from the evidence, Mr. Cotterill. I am not in the sand and gravel business, neither is the Georgia Commission.

Q. But such was the evidence before that Commission?

Mr. Burchmore: Just a moment, wait a minute. Is it material, Mr. Cotterill, to your question, to ask what was the evidence before the Commission, or do you want the fact? I would a little prefer to have it speak for itself. Now, he has not, as far as I know, testified what the evidence was before the Georgia Commission. The record before the Georgia Commission I assume is available to you. If it is material to your question I shall have to object. I will stipulate the fact if you want that (Rec., 2103).

Mr. Cotterill: You will stipulate the fact that there is that keen competition as stated in the decision of the Georgia Commission?

Mr. Burchmore: Yes, it is agreed that there is a very keen competition between the producers of Georgia among themselves, and with Alabama, and interstate.

Mr. Watkins: So far as the clients that I represent are concerned, I do not agree that that is universally true.

There are places in Georgia where there is competition between the Georgia shipper and the interstate shipper, and there are places in Georgia where there is no competition between the Georgia shipper and the interstate shipper.

[fol. 670] Mr. Burchmore: Well, that is what I mean, and I think Mr. Cotterill meant that. He would not mean that in the extreme northeastern corner of Georgia that all Georgia producers compete with Alabama producers, for instance.

Mr. Cotterill: I did not mean to limit my question, and practically had hoped either that a concession would be made by counsel, or that the witness would say that this statement of the Georgia Public Service Commission, being unqualified to any territorial extent whatsoever, is true (Rec., 2104).

Mr. Burchmore: Well, I am insisting that the report and everything in it is true.

Mr. Cotterill: Well, if you insist that everything said in that opinion is true, that—then you do concede that the statement is true, namely, that there is keen competition throughout the state?

Mr. Burchmore: The statement as made I concede to be true (Rec., 2105).

Exam. Waters: The report has that in it, and answers the question, and speaks for itself. It is the Georgia Commission's report, and certainly will be taken into consideration in this case (Rec., 2107).

Mr. Cotterill: I ask the witness again what if any fact within his knowledge suggests to his mind a justification for charging different single line rates on the commodities her- involved as between state and interstate traffic?

Exam. Waters: He may answer the question if he can.

The Witness: Mr. Cotterill, I can only answer that with the exhibits and testimony that I have submitted in this case (Rec., 2112).

[fol. 671] By Mr. Burchmore:

Q. You as a rate expert connected with the Georgia Railroad Commission, and enjoying advantages of experience and observation and the contact that that position gives you, do you individually feel that when a shipment of sand and gravel crosses the Georgia-Alabama state line it should by reason of that fact, or by reason of any other fact—or,

by reason of that fact, that it should pay any higher of lower or different rate than if under the identical distance and other conditions it did not cross the state line? (Rec., 2113).

A. No.

By Mr. Cotterill:

Q. Mr. Price, in its decision of January 21, 1927, docket 17517 and consolidated cases, the Interstate Commerce Commission stated as follows at page 169:

"There is of course no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation."

I will ask you whether you know of any fact which to your mind suggests an inaccuracy or an error in that conclusion?

Mr. Burchmore: Just a moment before he answers. I object to that question on two grounds. The first ground is that the witness has not been qualified and has not testified as a transportation witness dealing with transportation questions other than the particular transportation questions that he has covered on his direct, namely, the distances and the names of the carriers serving the points and the locations of certain industries, what I would call physical facts. He has not been qualified as a witness competent to testify in regard to so called operating and transportation questions separated from traffic matters (Rec., 2116).

[fol. 672] Secondly, that it calls for a conclusion of the witness which would be in effect a review of an substitution of his judgment for the expressed judgment of the Interstate Commerce Commission on a record made in the year 1926.

Exam. Wafers: With all these objections noted, you may answer the question, Mr. Price, if you can (Rec., 2117).

I don't know of any difference in intrastate transportation conditions.

By Mr. Gwathmey:

It is my understanding that the I. C. C. in Docket 17517 granted relief in its Fourth Section orders to the carriers

from the provisions of the long and short clause of the Act, with certain limitations, and it is also my interpretation of that order that the rule for computing distances which the Commission set out at page 166 of that report is as much a part of the Commission's findings and decision as any other part of the report and order and the carriers are bound by that rule and must observe it. I should have to make a complete check of all my exhibits to determine whether I know of any instance respecting the interstate rates into Georgia in which the 17517 basis has not been applied by the carriers. For the moment I cannot give you a single instance where the rates were not according to Docket 17517 basis, excepting the rate from Montgomery to Atlanta (Rec. 2118).

[fol. 673] I doubt very much that I could point out as many instances respecting the intrastate traffic as I did respecting interstate traffic which I thought tended to show a departure from the 17517 basis. It would require a complete check to check out that situation in Georgia because point to point rates are not published in Georgia. You publish a mileage scale which is subject to certain rules of your tariff that were not required by the Georgia Commission. The Georgia Commission does not require you to protect a rate between two given points other than via the rate making route. You are permitted to do that voluntarily and your tariff provisions make it so. But to pick out points from here to there and beyond is a condition I do not think you would find as prevalent in Georgia as it is interstate (Rec., 2119).

The provision in that order governing the Georgia carriers in computing distances and rates in their tariffs was filed by the Georgia carriers with the Georgia Commission and accepted and not disapproved by the Commission because it reflects the deductions. I stated in my direct testimony that I don't recall but two instances in Georgia where the carriers have varied from the Georgia scale, and that was the Junction City-Atlanta case, the Central of Georgia, the A. B. & C. and Atlanta & West Point. There may be others that may be picked out by apply- the rule in Glenn's Tariff (Rec., 2120).

[fol. 674] The order of the Georgia Commission permits the non-observation of the long and short haul rule, whereby a circuitous route is authorized to meet the rate of a

short route in Georgia, and it also permits the charging of a higher rate at intermediate points.

The rule of the Georgia Commission is entirely different from the rule for computing mileages as fixed by the Interstate Commerce Commission in docket 17517; in that under 17517 a carrier is required to compute the rate via the shortest route, the rate making route, and via junctions where carload traffic may be interchanged without the transfer of lading, and that becomes the rate regardless of how you move the traffic; as I understand the order, you have no option in the matter. The Georgia Commission's order does not require that.

Mr. Burchmore: Well, in fairness—I did not interrupt your questions, Mr. Gwathmey (Rec., 2121), but I want to point out a feature of our contention there with you may have the witness comment on fully, and which I do not think from the questions is understood, and that is that the 17517 scale of rates as promulgated by the Interstate Commerce Commission is a scale that sets forth certain rates opposite certain distances, which is in its actual application substantially discounted on the actual movements, in contrast to which the scale put in by the Georgia Commission is a scale that actually applies in general practice, and with extremely limited deviations of the actual routes, and Mr. [fol. 675] Price has pointed out in his direct — the facts that I think draw that distinction. That is our position, and it is the position that relates to the statements made by Mr. Comm. Eastman in the general Southern Class Rate case with regard to the differences between figuring short line tariff routes and short line routes that move traffic on the one hand, and by using these very short routes that represent the minimum rail distance without transfer of lading.

By Exam. Waters:

The rate under the Georgia Commission's order is fixed in this way (Rec., 2122):

If that rate fixes $1.00 for 100 miles, the carriers are permitted to charge that rate for that 100 miles, regardless. The rate between two given points, or rather the distance between two given points, may be less than 100 miles, and a lower rate might be made. I can illustrate that, Mr. Ex-

aminer, in this way: The Southern Railway from Atlanta to Macon is the short line distance, and for competitive reasons is considered the rate making line. The Central of Georgia line is slightly longer, about 13 miles longer. The Georgia Railroad also has a line from Atlanta to Macon which is very circuitous. There is nothing in the rules or any order of the Georgia Commission that will require the Central of Georgia to operate the same rate from here to Macon that is made in connection with the Southern Railway mileage, or that requires the Georgia Railroad to handle traffic from Atlanta to Macon via its circuitous route on the short line mileage. They are permitted to go out of that [fol. 676] business if they so desire, or stay in it if they so desire. If I understand the 17517 order correctly, on the illustration just made from Atlanta to Macon, the Southern Railway would fix the rate from Atlanta to Macon and that would then become the rate via the Georgia R. R., or the Central of Georgia R. R. (Rec., 2123).

By Mr. Gwathmey:

I understand those other routes would be required to meet the rate if they handled the business (Rec., 2124). Yes, sir, the discrimination shown by my exhibits results between shippers on the single lines on the one hand and shippers on the joint line hauls on the other, and I regard that an undue discrimination (Rec., 2125).

Q. Does not that same discrimination exist today as against interstate shippers into Georgia and in favor of intrastate shippers in Georgia?

A. Well, that is a matter that the Interstate Commerce Commission will have to decide.

They will have to decide that. I am speaking now as to the rates in Georgia, that is what you asked me about. The dollar rate published by the Central of Georgia from Junction City to Atlanta, was published after correspondence between the Railroad and the Georgia Commission, which correspondence was initiated as a result of complaints received by the Commission from shippers in the vicinity of Junction City on the Central of Georgia (Rec., 2126). There is no physical connection between the A. B. [fol. 677] & C. and the Central of Georgia at that point, and I was directed by the Commission to handle the mat-

ter with the Central of Georgia, and suggest that the Commission's opinion was that the rate should be no higher than those pits on the Central of Georgia than the rate that would obtain if there was an actual connection at Junction City.

By Mr. Brooker:

The short line distance from Junction City to Atlanta via the A. B. & C. and the Southern is 101 miles (Rec., 2127), and the Georgia Commission's mandatory rate for that distance is a maximum of $1.00 per ton if the traffic is handled that route, and that is true whether it is a single line haul over the A. B. & C. direct to Atlanta from Junction City for 104 miles, or whether it is a joint line haul in connection with the Southern via Woodbury into Atlanta. Referring to my exhibit 163-B regarding the Junction City rate to Atlanta via the Southern, it would give the Junction City shipper the benefit of the Southern Railway's facilities in Atlanta, but not necessarily the facilities of all other lines; it is within the distances prescribed by the Georgia Commission in its Freight Rule 23 (Rec., 2128). In that same exhibit the grouping of the Georgia scale provides for a rate of $1.00 *for* ton for distances over 90 to and including 110 miles.

Q. Did you have in mind any particular competitive situation when that grouping was made?

[fol. 678] Mr. Burchmore: I object to that question on the ground that it calls for an answer of this witness as to the judgment of the Georgia Commission as expressed in the order in which that scale was established. The order must speak for itself (Rec., 2129).

The Witness: I would like to explain my position in reference to the question.

Exam. Waters: Yes, explain it.

The Witness: I am under oath. I try to tell the truth whether I am under oath or not. It would be impossible for me to say what any member of our Commission had in mind at the time he cast his vote on any order issued by the Georgia Public Service Commission, and I cannot testify in regard to an order issued by the Georgia Public Service Commission beyond what is stated in the order, and the opinion that goes with it (Rec., 2130).

The grouping under the Georgia scale places shippers at Junction City on the A. B. & C. on the same rate basis as Rollo and Gaillard to Atlanta. I will have to refer to my exhibit, 178-B, which covers that situation. If Junction City and Rollo both come within the bounds of that distance of 90 to 110 miles, the rate from both points to Atlanta would be $1.00 (Rec., 2131).

I don't recall any scale prescribed by the I. C. C. on roadbuilding materials such as sand, gravel, crushed stone [fol. 679] and slag that don't provide for joint line differentials for joint line hauls. In the other scales I have referred to, the character of the other commodities is of a higher grade than sand and gravel, and generally speaking reflect a higher level of rates (Rec., 2133).

Referring to my Exhibit 175-B, showing a comparison of the Rollo single line rates fo stations on the Southern with joint line rates from Junction City to the same stations, my statement that the 17517 scale would produce rates discriminatory against Junction City shippers is based on the fact that whether it be a joint or a single line it creates a higher rate for an equal distance (Rec., 2134).

I see no material difference in the conditions surrounding the handling of traffic from Junction City over two railroads to reach Southern Railway and that on sand reaching these stations from Rollo, Ga. Rollo, Ga., as I stated in my direct testimony, is just south of Atlanta here, near Fort Valley. These stations here are north of Atlanta, between Atlanta and the South Carolina state line. The traffic brought in from Rollo by the Southern Railway destined to Tugalo, Ga., the last point on this exhibit, would move through the Southern Railway yard, where it would be broken up and switched in to trains, on the same principle that if this traffic was delivered to the Southern Railway by the Atlanta, Birmingham & Coast and switched into trains, if that is what you have reference to (Rec., 2135).

I am speaking of the entire movement, because you have got to take into consideration, and I presume that is what you have got to take into consideration, and I presume [fol. 680] that is what you have reference to, the actual physical handling of the traffic, and both movements would be through the Atlanta terminals. Traffic reaching At-

lanta destined to Southern Railway stations via the A. B. & C., would go into the A. B. & C. yards and from there to the interchange track with the Southern. It will pass through three yards on the Southern, through the South yard, through the North Avenue yard, and then over to the Inman yard. Under the normal operating movement for traffic to be interchanged in joint line hauls, it first goes to the break-up yard (Rec., 2136). I am talking now about the conditions that existed years ago when I was in the railroad service, and so far as I know there has been no change in the general handling of traffic. These trains are brought in to the train yard, where they are broken up and classified into the cuts going to connecting lines or the cuts going out over another division, or to the cut for distribution for local delivery. The physical handling is practically the same as far as I can see. After that is done, it is delivered on the interchange track of the connecting line, the same as it would be delivered at a public team track or a private assigned siding, or if it were destined to a connecting line for delivery on the connecting line's track. Then the connecting line goes to this interchange track and picks this cut of cars up and takes it to its yard, and there it is made up into trains and taken out over the connecting line (Rec., 2137), the same as if it came in over their own line from the south. [fol. 681] If you have in mind a station 10 miles south of Atlanta as compared with business moving from Rollo to that station, or business from Junction City to that station, there would naturally be a greater distance (Rec., 2140); and if it fell within that grouping of 90 to 110 miles, it would be the same.

My understanding of the 17517 scale is that the rate from Rollo would be higher than that from Junction City because of the application of the joint line differential. Yes, I could have shown instances where Rollo could have been discriminated against because of the application of the 17517 scale, just as I did show Junction City to be discriminated against. The exhibits I put in merely illustrate the condition and do not purport to show all of the conditions throughout the state (Rec., 2141.)

By Mr. Watkins:

There is sand produced at Lumber City, Ga., and my recollection is that it is 182 miles from Atlanta, and I think

Lowry, Ga., is another point. Yes, there are in Georgia plants that would benefit by the 5¢ progression for 25 miles and plants that would pay 10¢ for the 25 mile progression (Rec., 2142).

I don't think the mileage blocks should be always constant. If I understand what you mean by being constant, say you start out with a 20 mile mileage block on a 500-mile scale, and you make your breaks at 20 miles for the entire distance. I do not think that should be done on this commodity. I think the mileage block should be increased at given distances uniformly and that the rate of progression as to that rate should then be uniform with those mileage blocks so as to produce a decrease in the rate of progression as the distances increase, and thereby [fol. 682] bring about uniformity (Rec., 2143), and I regard that as largely a question of judgment of the rate prescribing agency.

By Mr. Webster:

Q. If in making a scale, and the distance is figured 230 and over 200 miles, which is a 30 mile progression, if the rate of progression should be five cents, how would you then justify the next 30 mile scale on basis of 10 cents progression?

A. Mr. Webster, I consider that is an inconsistent rate of progression.

(Witness excused.)

[fol. 683] Willis Callaway was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Webster:

I appear for and am the general sales manager for the Georgia Lime Rock Company, located at Perry, Ga., and have direct supervision over all sales and shipments moving from Perry. I am not a rate expert. I know very little about the construction and application of rates from a rate expert's point of view.

My testimony in this case will be that of a business man endeavoring to show, from a business point of view, the possibilities that we will have to face in the event a revision or readjustment is made in the transportation charges, or the basis for construction of transportation charges to be collected in the furture in Georgia.

Mr. Cotterill: If your Honor please, I object to the testimony under the witness' statement of what it purports to be. It is wholly immaterial what a business man's point of view may be as to the results which might result from the application of the interstate commerce act. The thing we are here inquiring into is whether or not the Act is being violated (Rec., 2145).

A. The plant at Perry commenced shipping January 12, 1928. I have had our shipments tabulated for the period January 12, to August 14, 1928, which is approximately seven months.

I submit herewith, as my exhibit No. 181-B, statement showing tonnage that has moved from Perry to both single line destinations and joint line destinations. We have made no shipments to interstate joints. During this period the plant shipped 199,744 tons, of which 98.1 per cent of [fol. 684] the total movement was transported to a destination on a line other than Central of Georgia Railway, and 1.9 per cent of the total tonnage moved to the single line destinations.

This statement very clearly shows the extent to which the Georgia Lime-Rock Company shipping from Perry, Ga. will be handicapped by the ability of its competitors located at Chattanooga, Birmingham and Montgomery (Rec., 2148) to move competitive traffic from interstate points, in the event the proposed joint line arbitrary is added to the joint line movement.

When it is taken into consideration that more than 98 per cent of our total tonnage will move on the joint line arbitrary, it is very easy to see how distinct a disadvantage and prejudice will accrue against the Perry shipper as contrasted against the interstate shipper moving his traffic on the single line rate.

I want to repeat that the statement submitted herewith correctly reflects every ton of freight that has moved from Perry during the period indicated, and while it is true that

our destination points will change, as our contracts will vary, yet I believe that the seven months period shown reflects a relative situation that we may expect to have in future.

To show the effect in principle of the single line and joint line scale contrasted with the one mileage scale for both joint and single line application, there is submitted herewith page 2 of the exhibit showing the railroad mileage in Georgia embrased within the class A or standard railroad grouping. Within Georgia there are 5,359 miles of standard railroad classification.

The point represented by me is Perry, Ga. From this point at the present time there is shipped limerock (Rec., 2149).

[fol. 685] This commodity is competitive with practically all other commodities in the so-called sand and gravel Interstate Commerce Commission grouping, when used in connection with highway construction. The interstate points from which we receive our greatest competition are Montgomery, Ala., Birmingham, Ala., and Chattanooga, Tenn. The plants located at these points have a geographic and transportation location that permit such plants to ship upon a single line scale to a much greater territory than the plant located at Perry, Ga.

Pages 3, 4, and 5 show the extent of such territorial advantage whenever shipments are made from the interstate points mentioned to Georgia destinations.

Perry, Ga. can ship in Georgia to only 1329 miles of territory on a single line rate adjustment. This is equivalent to 24 per cent of the Georgia mileage; whereas Montgomery can reach 3097 miles of territory, equivalent to 57 per cent of the total Georgia mileage. Chattanooga can reach 3760 miles of territory, or 70 per cent of the total Georgia mileage. Birmingham can reach 4049 miles of territory, or 74 per cent of the total Georgia territory.

Representing the manufacturers and miners in Georgia at the point named, I am authorized to state that it is the belief of said shippers that a more equitable adjustment (Rec., 2150) all around would be a consolidation of the single and joint line scale with the single line scale, to be made applicable to both interstate and intrastate shipments. It is our belief that commodities of such low value as the commodities embraced in this case should be given

the greatest possible latitude in the distribution thereof [fol. 686] and no hard or fixed transportation company division should be used in prescribing the rates for general distribution.

Any general schedule of rates, intrastate and interstate, that produces the effect above shown, say at Perry, works to the great disadvantage and prejudice of the Georgia shipper in attempting to meet the competition of the interstate shipper; in that, the Georgia shipper can not reach more than one third to one half of the territory that the interstate shipper can reach by using the single line scale from interstate points, and joint line scale from Georgia points to the territories affected by this case.

My testimony relates strictly to Perry, Ga. (Rec., 2151).

Cross-examination.

By Mr. Cotterill:

On the first page of my exhibit, take Baxley, for instance, on the Southern; that would be a single line from Chattanooga on the Southern, and from Montgomery it would be a joint line. It seems to be true that we started out at Baxley in selling this material with an advantage over Montgomery because while both of us had a joint line mileage to Baxley the interstate shipper had to pay from Montgomery a higher charge than we did (Rec., 2153).

[fol. 687] By the heading of my exhibit "can be reached", I meant shipments moving from Montgomery can reach 1329 miles of Central of Georgia destinations on a single line movement. I don't think business could move single line out of Montgomery to L. & N. destinations in Georgia. The L. & N. used to have a route up through Cartersville with a connection. It may still be in existence (Rec., 2154).

In my exhibit I have assumed the practical possibility of a single line haul from Montgomery to L. & N. destinations in Georgia though I don't know what working arrangement the L. & N. may have with some of its connections. In the case of the Louisville & Nashville R. R. there you may have isolated an instance that would not be particularly applied to the point you are making, but if you will take any of the rest of the railroads, the Central of Georgia, the Atlantic Coast Line, the Atlanta & West Point or the Seaboard Air Line, you will find that they all moved

from Montgomery right into Georgia, and that is what I am trying to bring out of all these railroads (Rec., 2155).

They do move from Montgomery into Georgia over those railroads and to all stations on those railways in Georgia, and move over single line routes and single line rates. With reference to a movement from Montgomery to a destination northwest of Atlanta on the Seaboard Air Line, it might be taken to Savannah and brought up that way. I don't know their traffic arrangement (Rec., 2156).

[fol. 688] I have assumed as a practical matter that the Montgomery interests would get the single line rate, although the only single line route the Seaboard would have would be from Montgomery to Savannah, and then northwesterly 300 miles through Atlanta to destination. I do not know whether they would move it that way and I don't pose as a rate expert. Yes, it is my understanding and I have assumed that wherever there is a destination in Georgia on a railroad also serving Montgomery that the haul may be over that railroad as a single line from Montgomery and also that it would be the single line interstate scale that would be charged, and accordingly that we would be numerically at a disadvantage (Rec., 2157). My testimony is based on that understanding of the discrimination.

By Mr. Gwathmey:

Yes, my exhibit shows the fact to be that from January 12 to August 14, 1928, the entire tonnage from Perry moved exclusively to points in Georgia. We were not operating prior to January 12, 1928 (Rec., 2158).

By Exam. Waters:

I haven't figured it out but our average haul is something over 100 miles. We have not been paying a joint line scale since the Georgia Commission's order became effective (Rec., 2159).

By Mr. Caskie:

I know that Macon is on a single line, and I think Atlanta and the other points would be joint line, and if that is true, it is my understanding then that Montgomery would pay the

joint line rates to all points, other than to Atlanta and Macon, shown on my exhibit (Rec., 2160).

[fol. 688a] Q. Now if the joint line scale applied from Perry to these points in Georgia, would not you be on an exact equality so far as Montgomery is concerned, both paying joint line differentials to reach these points?

A. I will answer that in this way: We are not worrying so much about the business that has moved as the business that is going to move.

Q. But you put this in evidence.

A. In that particular case I would say "Yes."

Q. Now go one step further. You don't pay a joint line arbitrary to reach these points?

A. We did on some of the earlier shipments.

Q. That was prior to May? May 1st?

A. Yes, sir.

Q. Since May 1st you have not paid a joint line differential to reach these points?

A. That is right (Rec., 2160).

Witness excused.

[fol. 689] L. E. THORPE was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Webster:

I am traffic manager of the William P. McDonald Construction Company and associated companies engaged in the manufacture and shipment of materials for highway construction throughout the southeastern territory, with headquarters at Lakeland, Fla. (Rec., 2161).

The particular company for which I appear at this hearing is Consolidated Quarries, Inc., located at Lithonia, Ga., on the Georgia R. R. This company, when its plant is completed, will ship crushed rock and other roadway materials for the use of highway construction in Georgia.

I will file at this point Exhibit 182-B, consisting of 11 pages.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 182-B, Witness Thorp.")

Page 1 is a statement of class A or standard railroads with mileages operated in Georgia.

In this statement it is shown that there is 5,359 miles of standard railroads in Georgia. This exhibit shows the railroads upon which the single line scale will apply in Georgia, regardless of whether there is a one line or two line haul.

Page 2 shows the discriminatory results and territories affected by applying the single line rate from Lithonia as contrasted with the single line interstate scale from interstate points. If a joint line schedule should be established [fol. 690] on Georgia intrastate traffic it would mean that Birmingham could reach on the single line scale 74% of Georgia territory on standard railroad lines, whereas Lithonia could only reach 6% (Rec., 2162).

Expressed in mileage, Lithonia would be able to reach only 328 miles of territory, whereas Birmingham would be able to reach 4049 miles of territory. It will thus be seen that if a joint line arbitrary is applied on Georgia intrastate traffic, our shipments from Lithonia will be very heavily penalized because of the fact that we are located on the Georgia R. R., and this railroad only operates 328 miles of railroad in the state of Georgia.

Page 3 shows a similar result that would obtain from Chattanooga, Tenn., contrasted with Lithonia, in the event a joint line schedule should be made operative between Georgia points.

This statement shows that under the joint line rate structure such as now applies interstate, the Lithonia man would only be able to reach 6% of the total Georgia territory as against 70% that could be reached from Chattanooga on the single line rate.

Page 4 shows the same relation that would obtain from Montgomery versus Lithonia from this point. The interstate shippers would be able to reach 57% of Georgia territory on the single line scale, whereas the plant located at Lithonia could only reach 6% on the single line scale (Rec., 2163).

Pages 5, 6, 7, and 8 are intended to show some stations, with actual rate adjustment that would obtain to said sta-

tions, as contrasted with Chattanooga, Montgomery and Stockbridge, Ga.

Our objection to the joint line scale in Georgia goes to the fundamental basis of rate structure rather than to par-
[fol. 691] ticular points. These particular points are only put in for the purpose of showing the actual rates that would obtain to certain specific destinations.

Pages 9, 10 and 11 are merely graphs drawn to scale, showing the territory that would be available from Birmingham, Chattanooga and Montgomery to Georgia destinations on the single line rate schedule, as contrasted with the territory that would be available to Lithonia, Ga., on basis of the single line and joint line rate schedule.

These exhibits are merely reproductions of the figures shown in previous exhibits and tend to more clearly bring out the result from our point of view, showing that under the single line, joint line rate schedule, Lithonia, because of local conditions obtaining in Georgia, would be very severely handicapped in comparison with the interstate shippers.

As I have previously stated, it is our belief as miners, shippers, and roadway builders that commodities of such low value as commodities embraced in this case should be given the greatest possible latitude in the distribution thereof, and no hard or fixed railroad company divisions used in prescribing rates for general distribution (Rec., 2164).

The federal, state, county and municipal authorities should have the greatest latitude possible in the selection of the type of these commodities that are to go into a particular piece of roadway, and, in my opinion, such a situation can only be successfully met by putting all rates on the single line schedule, the same as this honorable Commission has done for numerous commodities that have much greater values than commodities here under discussion.

[fol. 692] Cross-examination.

By Mr. Cotterill:

I think our limited field of consumption is a justifiable difference for charging a joint line differential on a joint line movement from Montgomery to a point in Georgia and

not charging a joint line movement from our plant to the same destinations in Georgia (Rec., 2165).

The interstate shipper can reach far more territory on the single line haul than we can. Of course, if you assume that each and all of the movements is joint line, I see no reason why one should pay a joint line differential and the other should not. Our geographical position is such that a large proportion of our hauls would be joint line. We are against joint line differentials as such and I am not seeking to justify a different rule between interstate and intrastate joint line hauls (Rec., 2166).

By Mr. Caskie:

I didn't show Southern Railway stations in Georgia on Sheet 4 of my exhibit because the Southern does not go to Montgomery. It would be a joint haul. It would be joint hauls from Lithonia to all points in Georgia on the Southern. I don't know what the relationship would be between the carrier originating at Montgomery with the Southern R. R. If they have no relation, it would be a joint line from Montgomery to all Southern Railway stations in Georgia.

By Mr. Cotterill:

Our interests acquired this Lithonia plant sometime in June of this year (Rec., 2167).

[fol. 693] By Mr. Burchmore:

I don't understand that if instead of operating a stone plant we manufactured and shipped bricks from Lithonia and our Alabama competitors shipped bricks, we would both take the single line scale to joint line deliveries.

(Witness excused.)

A. P. Burke was thereupon called as a witness and, *first* first duly sworn, testified as follows:

Direct examination.

By Mr. Brooker:

I am President of the Atlanta Sand & Supply Company, producing sand only, at our plant at Rollo (Rec., 2168).

We formerly operated a plant at Gaillard and at Rollo. The billing point for this sand is Gaillard, and another plant in the same general territory is the Allon Sand Company, at Allon, Ga., and Gaillard is the billing point for Allon. We are located one mile south of Gaillard at Rollo, and the Allon Company's plant is one mile south of our plant. I have been authorized and directed to represent the Allon Sand Company because they operate on the same railroad and their interests in rate matters are identical with ours and I am familiar with their market situation (Rec., 2169).

Our present plant capacity is about 20 cars a day and our total average shipments is 10 to 12 cars per day. I think the Allon's capacity is 10 cars a day, and for the past 8 months their average shipments have been around 3 or 4 cars per day. In 1927 our average shipments to Atlanta were 20 cars per day and the Allon Company's averaged 6 or 7 cars per day. At the present time the average ship-
[fol. 694] ment is about 15 cars per day for both companies. (Rec., 2170).

In the past two or three years there were two, as many as three and sometimes five other shippers. Our selling price up and into 1927 was from 50¢ to 60¢ per ton. The 50¢ price was made to dealers for re-sale. To meet competition from the Junction City district our price has been forced down to a minimum of 40¢ to the dealer for re-sale, which is $1.40 Atlanta. That price is compared with the basis of 35¢ given by Mr. Brown and 30¢ given by Mr. Moore (Rec., 2171).

My information is these companies sell through dealers. Our investment in operations at Gaillard is around $200,000.00. I have been talking about washed sand. We have not shipped any dry sand for a number of years, although recently we got started, shipped a few cars, perhaps 25. Our price on dry sand is 25¢ and 30¢ per ton f. o. b. plant (Rec., 2172).

A shipment from our plant would move on the Georgia scale uniformly from origin to destination, and we are, therefore, restricted in Atlanta and Atlanta group points by Southern deliveries other than industries on the usual trackage arrangement. We can't make team track delivery on other lines. We are advocating a permanent uniform adjustment of state and interstate rates on sand and other

materials that will reflect the proper relative basis, based on distance, and permit of no departures.

Cross-examination.

By Mr. Cotterill:

What I have said applies equally to the rigorous maintenance of a uniform rate structure on this class of state and interstate traffic. As one of the largest shippers in the state, I think there is something wrong with the rate situation that needs correction (Rec., 2173).

(Witness excused.)

[fol. 695] Edwin Brooker was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I have three exhibits that I wish to present, to illustrate the situation as explained, relative to the Junction City-Rollo-Gaillard adjustment.

The first is a map which I will offer as exhibit No. 183-B.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 183-B, Witness Brooker.")

My next exhibit is a comparison of the mileages and routes applicable from competitive points to Atlanta and Atlanta group points. As a matter of comparison I have shown the mileages from Birmingham and Montgomery to the same destinations. I wish to offer this as exhibit 184-B (Rec. 2174).

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 184-B, Witness Brooker.")

My next exhibit shows a comparison of the mileages and rates on sand from the same competitive points. I wish to offer that as exhibit 185-B.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 185-B, Witness Brooker.")

These exhibits are self-explanatory (Rec., 2175).

(Witness excused.)

[fol. 696] HARRY T. MOORE was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I appear on behalf of the City of Atlanta, the Fulton County State Highway Board of Georgia, DeKalb County, Davidson Granite Co., Pine Mountain Granite Co. (Rec., 2175), Arabia Granite Co., Chupp Granite Co., Lithonia Granite Co., Brown Brothers, Howard, Ga., Moorac Sand Company, Junction City, Pa., and the following wholesale dealers in sand located in Atlanta: Campbell Coal Company; Cromer & Thornton, Inc., V. H. Kreigshaber & Son, and Nichols Contracting Co.

My exhibit 186-B is a statement of the total miles of standard gauge railroad operated within the state of Georgia, totaling 5,278.04 miles.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 186-B, Witness Moore.")

Exhibit 187-B is a statement comparing the single line haul available within the State of Georgia from interstate producing points with producing points located within Georgia.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 187-B, Witness Moore.")

This statement shows that shippers located in Montgomery, Ala., have 2,740 miles of single line hauls into Georgia while Perry and Howard, Ga., have only 1,372 miles (Rec. 2176).

Birmingham shippers of slag have 3,241 miles of single line hauls into Georgia, while Norris, Lithonia and Stone Mountain, Ga., shippers of gravel and granite competing with Alabama slag have only 328 miles of single hauls within Georgia.

[fol. 697] Oglesby, Ga., quarries have available only 313 miles of single line hauls within Georgia.

Junction City, Ga., shippers of sand have only 483 miles of single line hauls in Georgia.

Rollo and Gaillard, Ga., shippers of sand have 1,073 miles of single line hauls in Georgia against Montgomery

shippers of sand, having 2,740 miles of single line hauls into Georgia.

Stockbridge, Ga., stone quarries have 1,073 miles of single line hauls against Montgomery gravel shippers, of 2,740 miles of single line hauls (Rec., 2177).

Birmingham slag shippers have 3,267 miles of single line hauls, and Chattanooga shippers of gravel and sand have 2,858 miles of single line hauls into Georgia against Oglesby quarries, of only 313 miles of single line hauls within Georgia.

Exhibit 188-B is a statement showing the present rates on crushed stone, carload, from Graysville, Ga., as compared with the present rates applicable on slag, carload, from Alabama City, Ala., to stations located on the Southern Railway, between Atlanta and Brunswick, Ga., and the application of the so-called 17517 mileage scale from Graysville, Ga., the haul from the Georgia shipping point being joint line and from the interstate shiping point single line; indicating the disadvantage of the Georgia shipper as compared with the interstate shipper under the 17517 scale.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 188-B, Witness Moore.")

[fol. 698] This exhibit shows 77 points of destination located on the Southern Railway between Atlanta and Brunswick, Ga., originating on shipments of slag from Alabama City, showing the distances and the 17517 scale on slag, and to right of this column is shown the Georgia scale (Rec., 2178).

If there were producing points within Georgia for which the single line distance was the same as from Alabama City, the result would be as follows:

To 19 points of destination the 17517 scale and the Georgia scale are the same.

To seven points of destination the Georgia scale would be lower than the 17517 scale.

If the 17517 joint scale was applied from Graysville, Ga., distance for distance, the 77 points of destination from Graysville would be higher by amounts ranging from five to 15 cents per ton than from Alabama City.

By applying the 17517 joint scale from Graysville to the 77 points of destination shown on exhibit 3, the result would be that eight points of destination would be the same as Alabama City;

Five less than from Alabama City;

While 64 points from Graysville would be higher than from Alabama City for 13 miles shorter haul from Graysville.

Exhibit 189-B is a statement showing the present rates on crushed stone, carload, from Perry, Ga., as compared with the present rates applicable on slag, carloads, from Alabama City, Ala., to stations on the Southern Railway (Rec., 2179) between Atlanta, Ga., and the South Carolina state line, and the application of the so-called 17517 mileage [fol. 699] scale from Perry, Ga.; the haul from the Georgia shipping point being joint line and from the interstate shipping point being single line; indicating the disadvantage of the Georgia shipper as compared with the interstate shipper under the 17517 scale.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 189-B, Witness Moore.")

This exhibit shows 28 points of destination located on the Southern Railway between Armour and Tugalo, Ga., on shipments of slag originating at Alabama City, Ala., showing the distances and the 17517 scale on slag, and to the right of this column is shown the Georgia scale.

If there were producing points within Georgia for which the single line distance was the same as from Alabama City, Ala., the result would be as follows:

To five points of destination the Georgia scale would be lower than the 17517 scale;

To five points of destination the 17517 scale would be less than the Georgia scale; and

To 18 points of destination the Georgia scale and the 17517 scale would be the same (Rec., 2180).

In the event the 17517 joint scale was applied from Perry, Ga., all points shown on exhibit would be higher than from Alabama City, a shorter haul being from Perry, Ga.

Exhibit No. 190-B, consisting of two pages, is a statement showing the present rates on crushed stone, carload, from Stone Mountain, Ga., as compared with the present

rates applicable on gravel, carload, from Montgomery, Ala., to stations located on the Seaboard Air Line Railway [fol. 700] between Cordele and Savannah, Ga., and the application of the so-called 17517 mileage scale from Stone Mountain, Ga.; the haul from the Georgia shipping point being joint line and from the interstate shipping point single line; indicating the disadvantage of the Georgia shipper as compared with the interstate shipper under the 17517 scale.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 190-B, Witness Moore.")

This exhibit shows 56 points of destination located on the Seaboard Air Line between Cordele, Ga. and Savannah, Ga., inclusive, covering shipments of gravel from Montgomery, Ala., showing the distances and the 17517 scale on gravel, and to the right of this column is shown the Georgia scale (Rec., 2181).

If there were producing points within Georgia for which the single line distance was the same as from Montgomery, Ala., the result would be as follows:

To 19 points of destination the Georgia scale and 17517 scale are the same.

To six points of destination the Georgia scale is lower than the 17517 scale, and to 31 points of destination the Georgia scale is higher than the 17517 scale.

In the event the 17517 joint scale was applied from Stone Mountain, Ga., to the same points of destination the rates to substantially all of the 56 points would be higher than from Montgomery, and in many cases higher from Stone Mountain for a 44 mile shorter haul than from Montgomery, Ala.

My exhibit 191-B is a statement showing the present rates on gravel, carload, from Norris, Ga. as compared with the present rates applicable on slag, carload, from [fol. 701] Alabama City, Ala. to stations located on the Southern Railway between Atlanta and Lula, Ga., and the application of the so-called 17517 mileage scale from Norris, Ga.; the haul from the Georgia shipping points being joint line and from the interstate shipping point single line; indicating the disadvantage of the Georgia shipper as compared with the interstate shipper under the 17517 scale (Rec., 2182).

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 191-B, Witness Moore.")

This exhibit shows 15 points of destination located on the Southern Railway between Armour and Lula, Ga., covering shipments of slag originating at Alabama City, Ala., showing the distances and the 17517 scale on slag, and to the right of this column is shown the Georgia scale.

If there were producing points within Georgia for which the single line distance was the same as from Alabama City the result would be as follows:

To nine points of destination the 17517 scale and the Georgia scale are the same.

To five points of destination the Georgia scale is lower; and

To one point of destination the Georgia scale is higher.

If the 17517 joint scale was applied from Norris, Ga. to practically all points shown on exhibit, would be higher than from Alabama City, Ala., the shorther haul being from Norris, Ga.

My exhibit 192-B is a statement of the present rate on slag, carload, from two interstate shipping points such as Anniston, Ala. and Copper Hill, Tenn., to destinations within the state of Georgia; the haul from one point being single and the other joint, indicating the disadvantage of the shipping point having joint haul as a result of joint line differentials (Rec., 2183).

[fol. 702] Mr. Gwathmey: We object to this exhibit. I don't suppose it is necessary to state the ground.

Exam. Waters: I think we all understand the ground. It is admitted subject to your objection.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 192-B, Witness Moore.")

This exhibit shows two interstate points of origin to stations on the Southern Railway from Constitution to Brunswick, Ga., inclusive, Anniston, Ala. being a single line haul, while from Copperhill, Tenn. joint hauls in all instances.

My exhibit No. 193-B is a statement of the present rates applicable on sand, carloads, from Columbus, Ga. and Junction City, Ga., Atlanta, Birmingham & Coast Railroad, road) to Central of Georgia Railway stations between Newnan, Ga. and Chattanooga, Tenn., compared with the

present rates from Chattanooga, Tenn. to the same destinations; also the rates that would result by applying the 17517 scale from the two Georgia shipping points, indicating the disadvantage of the Georgia shipper located at Junction City, Ga., Atlanta, Birmingham & Coast Railroad, under joint line differentials (Rec., 2184).

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 193-B, Witness Moore.")

This exhibit shows the result of applying the joint 17517 scale from one Georgia producing point and the application of the single line scale from the other Georgia point, the haul from Junction City being joint, and from Columbus being the single line; the distance to the points of destination shown being approximately the same.

[fol. 703] The single line rates are also shown from Chattanooga, Tenn., an interstate point, to these same destinations.

This exhibit also shows the two extremes, Junction City, Ga., versus Chattanooga, Tenn., at Dep. Ga., the present rate from Junction City is $1.30; from Chattanooga 90 cents; the distance from Junction City being 163 miles, and from Chattanooga 77 miles; the difference in rate in favor of Chattanooga being 40 cents.

Under the 17517 joint scale it would be increased to 50 cents.

At Newnan, Ga., where the distance is reversed, from Chattanooga 163 miles and from Junction City 77 miles, the Junction City rate is 90 cents and the Chattanooga rate $1.30; the same as reverse of the situation in effect today (Rec., 2185).

Under the 17517 joint scale at this point the Junction City rate would become $1.05, reducing the present spread of 40 cents Junction City under Chattanooga to 25 cents; whereas under the Chattanooga end of the adjustment the difference would be 50 cents in favor of Chattanooga.

Exhibit No. 194-B is a statement showing the present rates on crushed stone, carload, from Georgia producing points as compared with a competing interstate producing point such as Montgomery, Ala., to destinations on the Georgia Railroad within the industrial switching limits of Atlanta and adjacent thereto, compared with the rates that would result by applying the 17517 joint line mileage scale,

indicating the disadvantage of the Georgia shipper of crushed stone with the interstate shipper of gravel, based on car of 90,000 pounds or 45 net tons.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 194-B, Witness Moore.")

This exhibit indicates the result of applying the 17517 [fol. 704] joint line scale from Portland, Ga. to Avondale, Ga. and Decatur, Ga., the distance being the same to both points of destination. The present rate from Portland to both points of destination is 80 cents.

The application of 17517 joint scale, the rate to Avondale, Ga. would be 95 cents; to Decatur, Ga., 85 cents (Rec., 2186) when the private or assigned siding, a difference of ten cents per ton for only one mile difference in distance, and both points fall within the same block.

From Graysville, Ga. to Avondale, Ga. and Decatur, Ga. the present rate is $1.10 to both points. In the event of the 17517 joint scale being applied Graysville and Avondale rate would become $1.35; to Decatur, Ga., $1.15, when for private or assigned siding, a difference of 20 cents in favor of Decatur for only one mile difference in distance, and both points fall within the same block (Rec., 2187).

One of the largest developments around Atlanta is at Avondale.

From Montgomery, Ala. to Avondale, Ga. the present rate is $1.45 for a joint line haul of 183 miles; while from Montgomery to Decatur, Ga. the present rate is $1.30 for 182 miles; or 15 cents less than the 17517 joint scale; giving Decatur an advantage of 15 cents under Avondale for a difference in distance of only one mile.

Exhibit No. 195-B is a statement showing the present rates on crushed stone, carload, from a Georgia producing point as compared with a competing interstate producing point of gravel, such as Montgomery, Ala., to destinations [fol. 705] on the Seaboard Air Line Railway within the industrial switching limits of Atlanta, compared with the rates that (Rec., 2187) would result by applying the 17517 joint line mileage scale, indicating the disadvantage of the Georgia shipper of crushed stone with the interstate shipper of gravel, based on car of 90,000 pounds or 45 net tons.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 195-B, Witness Moore.")

From Lithonia, Ga. to Deerland, Ga., a distance of 29 miles, located on Seaboard Air Line, the present rate is 60 cents, which is on the Georgia scale.

In the event the 17517 scale was applied the rate would become 75 cents.

From Montgomery, Ala. to Deerland, Ga. the present rate is $1.30; or 15 cents under the joint line scale. The present spread being 70 cents with no change proposed in the Montgomery and Deerland rate, the spread would be only 70 cents.

A similar situation would exist between Lithonia and Montgomery destined to Emory, Ga., a point located on the Seaboard Air Line, except the Lithonia to Emory rate under 17517 scale would become 85 cents; 10 cents higher than from Lithonia to Deerland for exactly the same haul.

The present rate from Montgomery to Emory is $1.30; 15 cents under the 17517 joint scale. The present spread Lithonia to Emory under Montgomery is 60 cents; under the 17517 scale it would be only 45 cents (Rec., 2188).

My exhibit No. 196-B is a statement showing the rates on sand, gravel and slag, carloads, from producing points as shown to Atlanta, Ga., for delivery on private or as-[fol. 706] signed sidings of the Southern Railway I. C. C. A-10150, under the present Georgia scale and the 17517 scale, based on car of 45 net tons or 90,000 pounds.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 196-B, Witness Moore.")

This exhibit indicates the change in relationship as between state and interstate producing points on traffic consigned to Atlanta, and when for delivery on the Southern Railway which would be brought about in the event the 17517 joint scale was applied from all of the Georgia producing points shown on the exhibit.

This exhibit shows that from Junction City sand originating at that point can be delivered on the Southern Railway for $1.00, this being the single and joint line scale of the Georgia Public Service Commission.

Under the 17517 scale the rate would be $1.25 for Zone B delivery, or five cents higher than from Chehaw, Ala.,

to Zone B delivery, to which zone the bulk of the traffic is handled, and only five cents less than from Montgomery (Rec., 2189), due to the absorption by the Atlanta & West Point; while the 17517 scale would produce $1.35 to these deliveries from Montgomery; the present rate is $1.30 per ton.

From Norris, Ga., a point located on the Georgia Railroad, controlled by the same interest as lines operating from Montgomery and Chehaw, the rate to both Zones A and B deliveries of the Southern Railway would be five cents in excess of the Chehaw rate, and only five cents less than present rate from Montgomery.

On the Norris, Ga. shipments for Southern Railway de- [fol. 707] livery to both Zones A and B, the Georgia Railroad receives $1.20 net, which is on the Georgia scale, and same as the 17517 single line scale; while from Chehaw, Ala., the Western Railway of Alabama and Atlanta & West Point under the same traffic management will absorb 30 cents terminal of the Southern Railway, leaving only a net of 90 cents per ton on Chehaw, Ala. and Atlanta shipments, or 30 cents less than on the intrastate shipment from Norris, Ga., for the same distance.

The foregoing illustrations are fairly typical of hundreds of other comparisons that can be made by using the single line scales from interstate producing points into Georgia versus the application of the 17517 scale from producing points for joint hauls on intrastate traffic (Rec., 2190).

Q. And it also illustrates, does it not, Mr. Moore, that in numerous instances the carriers are not now collecting the full 17517 scale?

A. That is true.

Mr. Cotterill: Wait a minute, we object to that and move that it be stricken. It has to be proven by facts and not a general statement of that kind (Rec., 2191).

In conclusion, I would like to make this statement, that in our opinion the only purpose a differential can possibly serve is to create an artificial rate situation calculated to give some community an advantage to which its geographical location does not entitle it. This conclusion is in record with views expressed by the Interstate Commerce Commission in 101 I. C. C. 603 (Rec., 2191).

I want to make a correction on the Exhibit 187-B where the mileage from Junction City is given as 483 miles. The mileage of the Central should be added to that because [fol. 708] though not at Junction City it pays the Junction City rate.

Cross-examination.

By Mr. Cotterill:

Referring to Exhibit 188-B, all hauls from Montgomery Ala., to all of those destinations would be joint (Rec., 2192).

I don't advocate a joint line differential on interstate traffic and not on intrastate traffic, but it would depend on conditions for me to say I advocate a different single line scale on these commodities as between inter- and intrastate traffic. If all the circumstances surrounding the application of a single line scale are the same, state and interstate, I would say there should be no difference (Rec., 2193). Certainly there are dissimilarities of circumstances. I should want to know how the scales were constructed. I would have to know the construction because the conditions may not be the same. The same single line scale used interstate applied within Georgia might be discriminatory against intrastate traffic between points in Georgia.

Q. I mean what would cause the same scale on state and interstate traffic to cause a discrimination against Georgia?

A. I would not answer that unless you can give me two points that you have in mind, and if the conditions and circumstances were identical I can give you an answer (Rec., 2194).

By Mr. Gwathmey:

The reason we selected in my exhibit 188-B the four points, Graysville, Perry, Stone Mountain and Norris, was that those points came nearer matching the distance, mile for mile, than anything we could find. No, there are no other [fol. 709] shipping points in Georgia we might have selected that would have shown a different result where the joint haul was in Georgia.

Q. If you had selected Montgomery instead of Alabama City on this exhibit 188-B, you would have gotten a very different result, wouldn't you?

A. I think we should be permitted to make up our own exhibits in our own way. I told you the reason that I selected those points shown in that exhibit, because the distance was substantially the same. Now, to be fair about it, I show what the Georgia scale would be if applied from Alabama City, if there were producing points within Georgia of the same distance.

By Mr. Burchmore:

It makes no difference to my companies whether the competitor in another state has a higher or lower scale if his actual freight rate is lower than mine (Rec., 2195).

The rates from Montgomery to Atlanta are lower than from Alabama City. From Montgomery to the stations named on my exhibit 188-B, the rates in cents per net ton are higher than the rates from Alabama City to those destinations and a comparison of the distances shows, to points south of Atlanta on the Brunswick & Atlanta Division the distance from Montgomery to Atlanta is 176 miles and the distance from Graysville is 126 miles, a difference of 50 miles shorter haul from Graysville, and the haul from Alabama City would be 39 miles less than Montgomery (Rec., 2196).

(Witness excused.)

[fol. 710] Exam. Waters: Any more witnesses on direct on either side?

(No response.)

Exam. Waters: If not, we will have the rebuttal.

L. V. Crane was thereupon recalled as a witness and being previously sworn, further testified as follows:

Direct examination.

By Mr. Walker:

As I understand Mr. Price's testimony, and as I recall it, statements made by Mr. Burchmore, it is claimed that (Rec.,

2197) aside from the differences in the rates themselves as between the interstate scale on the on hand and the Georgia Commission scale on the other hand, there is some difference in the application of those scales themselves.

I want to refer in that connection to my exhibit 108-B, which shows the present rates under the Georgia Commission scale on sand from Gaillard, Ga.

To a number of these stations the short line from Gaillard, Ga., which is located on the Southern Railway, to these stations in Georgia on the Southern Railway, are made over the Southern Railway. In other cases, and in numerous cases, in fact, the short line distances are not over the Southern Railway, but over joint line routes.

Now, take one point on the exhibit, Brunswick, Ga., the last point on page 4 of the exhibit. The short line distance is 223 miles, and the exhibit shows that distance is calculated via Southern Railway, Fort Valley, Ga., Central of [fol. 711] Georgia Railway, Montezuma, Ga., and Atlanta, Birmingham & Coast R. R.

Now, under the order of the Georgia Commission for that short line distance, we may not charge from Gaillard, Ga., to Brunswick, Ga., more than $1.50 per ton. It may be true that over the route of the Southern Railway, which is 322 miles, that speaking technically we may not be required under the order of the Georgia Commission to apply the same rate that is determined by the short line distance (Rec., 2918) of 223 miles, but as a practical matter we have got to charge the same rate or forego handling the traffic, and it is substantially the same situation on interstate traffic. The rate may be determined via one route, although you may have another route that ordinarily handles the traffic, and that other route may be longer than the short line route, and if it wishes to participate in the traffic necessarily it must charge the same rate as made by the short line distance.

There are any number of instances on the Southern Railway where the lowest rates from Gaillard, Ga., would be determined under the Georgia Commission's scale by joint line distance and not by single line distances over the Southern Railway, although the rates themselves from Gaillard, Ga., to these Southern Railway stations are restricted so they apply only over the Southern Railway.

Cross-examination.

By Mr. Burchmore:

The present rate from Gaillard, Ga., to Brunswick, Ga., is $1.50 (Rec., 2199), and if the 17517 scale were applied, as it is now applied on interstate traffic, by the Southern [fol. 712] Railway or other lines interstate in the transportation from Gaillard to Brunswick, the rate would still be $1.50 per ton, but that would not be true of many other stations shown on pages 3 and 4 of the same exhibit directly intermediate to Brunswick. I am not complaining of the Georgia Commission so far as Brunswick is concerned. I am merely illustrating how the rate to Brunswick applies, and what I said as to Brunswick applies also to the other stations shown on the exhibit.

Q. Can you give me one where you are complaining that there is something wrong from which the Southern Railway should have relief against the Georgia Commission's order, and where the mileage is figured by short hauling, if that be the word, the Southern Railway? I ask that because there seems to be so many destinations on that exhibit where the symbols of routes indicate a mileage intrastate that is a one line route.

A. Well, if you will look on page 3 of the exhibit and also on page 4 of the exhibit, you will find that distances figured over joint line routes determine the rates from Gaillard, Ga. (Rec., 2200). Since you bring in the question of rates, I was not discussing the question of rates, but I was merely illustrating the application of the rates, but if you want to take a case where there is a difference in rate, let us take a destination at the bottom of page 3 of the exhibit where the present rate is $1.40 from Gaillard to Everett, Ga., and the docket 17517 scale would be $1.50 per ton. Now, the rate of $1.40 now in effect from Gaillard to Everett, is based on the distance of 206 miles figured via Southern Railway, Fort Valley, Central of Georgia, Montezuma, Atlanta, Birmingham & Coast, Vienna, Georgia, Southern & Florida, Cordele, Seaboard [fol. 713] Air Line, Helena, and Southern Railway. Actually the rate applies only over the Southern Railway, and I will give you the distance over the Southern Railway. The distance from Gaillard, Ga., to Everett, Ga.,

over the Southern Railway is 303 miles, and that is the only route over which the rate from Gaillard to Everett, Ga., applies. That is the only route by which the rate applies (Rec., 2201).

By Mr. Burchmore:

Q. Do you mean to say that the Georgia Railroad Commission's order of March 13, 1928, requires the Southern Railway to transport sand and gravel from Gaillard over its line to Everett, a distance of 303 miles, at a rate of $1.40 or at any rate less than $1.50?

A. As a practical matter, yes, sir, we must either do that or close our route to the business.

Q. Is there any language in that or other order of the Commission that requires you to do that?

A. The order does not in terms require it but we have to forego handling the traffic over our own route or apply the rate that is made for the short line distance (Rec., 2202).

It is not a competitive situation, but the Georgia Commission says that for the short line the rate is so much. Now that is a maximum rate for that short line distance. Now, if we want to apply that rate over our own rails, we have got to apply the short line rate and keep open the other route.

By Mr. Burchmore:

Q. But suppose you did not publish $1.40 from Gaillard to Everett by the Southern Railway direct simply to meet a 206 mile route, including other carriers, what rate could you carry under the terms of the Georgia Commission's [fol. 714] order without violating that order?

A. Well, we could carry the scale rate for the actual distance, and we can do the same thing now under the interstate scale.

Mr. Burchmore: Yes, that is right (Rec., 2203).

(Witness excused.)

A. J. RIBE was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Cotterill:

My Exhibit 197-B shows the exact extent to which single line and joint line scales under docket 17517 are applicable from Alabama City, Ala., to all points within the state of Georgia, both on Trunk Lines and Short Lines.

(The same was thereupon received in evidence, marked "Shippers' Exhibit No. 197-B, Witness Ribe.")

On page 3 of this exhibit it is shown that the total single line mileage applicable from Alabama City is 1024 miles, or 15.27 per cent, while the remainder of the mileage within Georgia is subject to the joint line scale from Alabama City, and the percentage is 84.73 (Rec., 2204).

It was my understanding that preceding adversary witnesses regarded as single line movements all possible mileage where the origin and destination were on the same railroad. That is correct, for instance, Mr. Cotterill, as illustrated by the situation shown on several of the exhibits from Montgomery to Louisville & Nashville stations [fol. 715] in Georgia. It is true that there is a single line route available, but that single line route is north from Montgomery through Decatur, Ala., and Nashville, Tenn., to Lebanon Junction just south of Louisville, across the state of Kentucky to Sinks, Ky., and thence down into Georgia through Knoxville, Tenn.

In my exhibit I set forth the mileage within Georgia to which the joint line arbitrary is in fact charged in connection with interstate movements from Alabama City, and for the purpose of that exhibit I checked out the specific rates from Alabama City to every point in Georgia and found whether they were made on single line or joint line scale (Rec., 2205).

My next two exhibits are exactly alike in character except that they relate respectively to Birmingham and Montgomery.

(The same was thereupon received in evidence, marked "Shippers' Exhibits Nos. 198-B and 199-B, Witness Ribe.")

Birmingham, while a potential shipping point, is not an actual shipping point. In exhibit 198-B I have used Birmingham as the point of origin, which is a potential shipping point, but which has never been an actual shipping point for slag or any of the other commodities here involved. The largest shipping point at the present time in the Birmingham district is Ensley, Ala., which is not within the Birmingham switching limits, and which is not reached by the rails of the Atlanta, Birmingham & Coast and the Central of Georgia R. R.; therefore, when we got from the principal shipping point of Ensley in considering this exhibit 198-B, we must deduct the single line mileage shown for those two carriers, which as to Ensley, makes the percentages 16.5% single line, and 83.5% joint line.

[fol. 716] Also, that today there is a new slag plant going up at Fairfield, Ala., which is within the Birmingham district, and which point is reached only by the Birmingham Southern R. R., which terminates at Birmingham. When that plant is in operation its hauls to Georgia will be joint line 100%.

Since the 17517 rates were made effective, I have been almost continually checking the point to point rates established by the carriers from Montgomery and points in the Birmingham District and have found them almost 100% perfect (Rec., 2207). The only instance that I recall was some five or six stations on the Central of Georgia in the vicinity of Alabama. I found that the rates were not on the scale and the formula prescribed by the Commission, and I had the rates corrected.

Exhibit 199-B, as I have said, is similar to the other exhibits, and it shows that from Montgomery the single line scale to Georgia has application to the extent of 29.7 per cent, and the joint line scale has application to the extent of 70.3%.

In connection with that exhibit, I would like to refer to Mr. Price's exhibit 178-B, which besides Montgomery names five other shipping points for sand and gravel in the Montgomery district. Those points, or rather three of them, are Jackson's Lake, Prattsville Junction and Coosada, Ala., all three of which are local stations on the Louisville & Nashville R. R. immediately north of Mont-

gomery, and which involve joint hauls to Georgia 100% (Rec., 2208).

The fourth point is Chehaw, Ala., on the Western of Alabama, which point has the single line scale only to points on the line of the Atlanta & West Point.

[fol. 717] The fifth point is Mitylene, Ala., which under the docket 17517 scale has the single line scale only to points on the Seaboard Air Line between Montgomery and Savannah, including the branches of that line.

Cross-examination.

By Mr. Burchmore:

Q. Now, I want to ask you to comment on this, namely, that according to Witness Crane's exhibit 137-B, page 3, the rates in effect from Montgomery, Ala., to stations on the Southern Railway are made under the 17517 scale as applied to certain mileages. One of his destinations is Helena, Ga. Is it not a fact that Helena, Ga., is on the line of the Southern Railway between Atlanta and Brunswick, where you show 275 miles to which the joint line scale applies, and no miles to which the single line scale applies? (Rec., 2209).

A. That is correct, yes, sir.

Q. Now, Mr. Crane's exhibit shows that to Helena, Ga., from Montgomery, Ala., over the Southern Railway the rate is $1.40, which is the rate for 223 miles single line under docket 17517, made by using 223 miles single line route of the Seaboard Air Line. Now, there is one station on the Southern Railway to which the single line scale applies, and not the joint line scale, isn't there?

A. Yes, sir, that is correct. However, Helena, on the same exhibit, is included single line under the heading of Seaboard.

[fol. 718] Q. But I am not asking about that. Here is a piece of track, namely, the track from Atlanta to Brunswick, over which, if the Southern Railway hauls any sand and gravel from Montgomery destined to the station of Helena, the rate charged is a rate under the single line mileage scale for 223 miles according to Mr. Crane's exhibit, isn't that true?

A. That is true, and that is the mileage over the Seaboard Air Line from Montgomery to Helena, which mile-

age for single line haul is credited to single line on page 2 of my exhibit under the heading of Seaboard Air Line (Rec., 2210).

Q. But if the joint line scale applied from Montgomery to Helena, Ga., on the Southern Railway the rate would be very substantially higher than the rate of $1.40, wouldn't it?

A. That is obvious, yes, sir.

Q. Now, you show on this same page Columbus. Columbus, Ga., is a station on the branch of the Southern Railway from McDonough to Columbus, is it not?

A. Yes, sir.

Q. Isn't it true that both to McDonough at one end, and to Columbus at the other end, the rates are actually made on the single line scale basis of a shorter single line route instead of the joint line scale which your exhibit represents as applied?

A. Did I understand you to say the whole line or did you limit that to Columbus?

Q. Only to McDonough at one end and Columbus at the other.

[fol. 719] A. McDonough, as I recall, is a station of the Southern Railway and the joint scale applied to McDonough.

Q. It is true, though, that at Columbus the rate in effect—and this is shown on page 2 of Mr. Crane's exhibit 137-B—from Montgomery over the Southern Railway is the rate produced by applying the Commission's 17517 single line scale to a certain mileage, and is not the rate produced by applying their so-called joint line scale to any mileage? (Rec., 2211).

A. I would seriously doubt it, Mr. Burchmore. I want to explain why I doubt it.

Q. Here is why I ask that: Mr. Crane's exhibit show Columbus, Ga., Southern Railway route K, which is Central of Georgia direct as the short line, 95 miles.

A. The reason I would doubt that, Mr. Burchmore, is that the rate from Montgomery to Columbus is made over the short route, which does not embrace any part of the line of the Southern Railway. I cannot recall any route in connection with the Southern Railway that would not probably exceed the routing circuity allowed by the Commission and, therefore, if the business was handled in con-

nection with the Southern Railway I am quite certain that the joint scale would be applied.

Q. The Southern Railway does not reach Montgomery? A. No, sir.

Q. Can you state what the rate is from Montgomery to Columbus via the Southern Railway as delivering carrier, from an examination of Glenn's tariff?

A. No, sir. Because you would have to look at the map [fol. 720] first and find out the shortest route in connection with the Southern Railway, then figure your mileage over that route to see what the percentage of circuity was, and then go to the mileage scale in the back of Glenn's tariff to find out what the rate was for that distance (Rec., 2212).

Q. Would it be possible for you to do that in a minute or two?

A. No, it would not.

Q. Then turn to your exhibit 198-B, which deals with the situation from Birmingham. You show the Atlanta & West Point R. R., West Point to Atlanta, 90 miles, to which the joint line scale applies, no miles to which single line applies. Is LaGrange, Ga., a station on the Atlanta & West Point between West Point and Atlanta?

A. It is.

Q. I ask your comment on the fact that according to Mr. Crane's exhibit 137-B the rate from Birmingham, Ala., on slag to LaGrange, Ga., is 130 cents per net ton, being the 17517 scale rate for 166 miles single line distance over the route of the Atlanta, Birmingham & Coast Railway, and ask you whether LaGrange is not a point to which the single line scale applies?

A. The single line scale applies to LaGrange—I do not recall what the rate is—and that is credited on this exhibit under the heading of Atlanta, Birmingham & Coast, it is credited to the Atlanta, Birmingham & Coast R. R. (Rec., 2213).

Q. And yet there is a station to which if material moves [fol. 721] from Birmingham via the route of the Atlanta & West Point R. R. the rate applied thereon is the rate ascertained under the single line mileage?

A. That is correct. Now, Mr. Burchmore, I would like to clear that up for your benefit by using the Atlanta &

West Point on exhibit 198-B. You will notice that I show from West Point to Atlanta a distance of 90 miles that the joint scale applies. Now, the one exception is LaGrange. I could have come up to the outskirts of LaGrange on the one side and started at the outskirts of LaGrange on the other.

Q. And subtracted the mileage within the city of LaGrange? Which is correct?

A. When you get to Atlanta you have the single line rate made over either the Southern Railway or the Seaboard Air Line, but I had to run that 90 miles into Atlanta to include the mileage from the first station out of Atlanta to Atlanta.

Q. But if you had subtracted this little bit of mileage that you say is involved at LaGrange, you would have had something on the single line scale, wouldn't you?

A. Yes, sir, and I could repeat the same thing 40 or 50 times on the exhibits (Rec., 2214).

Q. And if a shipment moved over the Atlanta & West Point R. R. to LaGrange under the single line scale of 166 miles, the Atlanta & West Point would have hauled it a number of miles over its rails, wouldn't it?

A. 30 or 40 miles.

[fol. 722] Q. And would you call those 30 or 40 miles practically nothing because it is only one station?

A. You are comparing mileage one way and I have shown it another. They are not comparable.

Q. Isn't it generally true as to your exhibits 197-B and 198-B and 199-B, that the destinations to which you have shown mileage in the second column may actually take freight rates that are arrived at by applying the so-called single line scale to a single line mileage and not by applying the joint line scale to a joint line mileage?

A. Not to all of these points.

Q. No, I say to some?

A. Just a few of them, and it would not change the percentages one percentage point.

Q. Is it not also true that over the railroads which you have here shown in some cases the mileage you have shown under the single line scale column in point of fact is stations where a lower rate is produced by taking another route under the joint line scale?

A. No, sir. In making up these exhibits in quite a few instances we found that the same rate could be arrived at by the use of a single line route and be used as a joint line route, and in all such instances we used the single line mileage and not the joint line (Rec., 2215).

Q. Well, I want to call your attention then to a situation; If you re-wrote your exhibit 199-B in this form, namely, to show the number of stations to which single line [fol. 723] scale applies, and the number of stations to which the joint line scale applies, you would have in many cases stations to be inserted under the second column where now you show no mileage, isn't that true?

A. No, sir.

Q. What I mean is, on the second page of exhibit 199-B, for instance, Southern Railway Atlanta to Brunswick, you show in the second column 275 miles to which joint line scale applies, first column, no miles to which single line scale applies. If you re-wrote that to show the number of stations on the Southern Railway between Atlanta and Brunswick you would have one or more stations under the first column which shows no mileage, and you would have 274 or less stations under the second column where you now show 275?

A. Those are not stations, those are miles.

Q. I beg your pardon, that is right. You would have one or more stations under the first column to which you show no mileage? (Rec., 2216.)

A. If you repeated the junction points on every line you would duplicate these junction points.

Q. I am speaking of a station on the Southern Railway to which the single line scale makes the rate via the Southern Railway to which the single line scale via some other road makes the rate via the Southern Railway.

A. If I was making up a statement showing the number of stations and number of miles under which the single line and the joint line scale apply following the Commission's [fol. 724] decision in docket 17517 and its formula, Helena would come under the line of the Seaboard Air Line as a single line station, and would not appear under the Southern Railway at all.

Q. Where would you put Helena as a destination on the Southern Railway with respect to the rate charged by the

Southern Railway from Montgomery on movements over its line?

A. I would not put Helena under the Southern Railway if I was listing them by station numbers.

Q. I see.

A. You understand, Mr. Burchmore, these few little exceptions that you have found here, if you go from Jackson's Lake, Prattville Junction and Coosada, local stations on the Louisville & Nashville in the Montgomery district, or from Ensley, Ala., the actual shipping point for slag in the Birmingham district, these exceptions as to LaGrange, Helena, and so forth could not be made (Rec., 2217).

(Witness excused.)

Mr. Gwathmey: If there are no other witnesses, I wish to offer at this time corrected page 14 of Witness Doss' exhibit 100-B. Mr. Doss was asked to file this during the hearing, and I have already handed it in and distributed copies (Rec., 2218).

Exam. Waters: Any more testimony to be offered in the case?

Mr. Burchmore: Except that I wish to ask the Commission to require the tonnage figures I have already requested. [fol. 725] Exam. Waters: Briefs are set for January 14, 1929.

Mr. Cotterill: I assume that this is to be a proposed report case.

Exam. Waters: As far as I know it is. Hearing closed.

[fol. 726] IN UNITED STATES DISTRICT COURT

[Titles omitted]

STIPULATION AND ORDER EXTENDING TIME—Filed Oct. 15, 1930

It is hereby stipulated by and between undersigned counsel for parties of record in the above entitled cases, that the time within which the Georgia Public Service Commission, and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T.

Knight, as Commissioners thereof, and the State Highway Board of Georgia, et al., complainants, shall furnish, serve and file in the office of the clerk of the District Court, their narrative statement of the testimony and exhibits contained in the transcript of record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of the record of this Court on Appeal and their designation for the record of additional appeal papers which have been filed, and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with [fol. 727] the Clerk of the Supreme Court of the United States, may be further enlarged to and including Tuesday, the 18th day of November, 1930.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, S. J. Smith, Jr., Solicitors for Complainants in No. 563. Edgar Watkins, Mac Asbill, Solicitors for Complainants in No. 565. Elmer B. Collins, Special Assistant to the Attorney-General, for United States of America. Edward M. Reidy, for Interstate Commerce Commission. J. A. Streych, for the Gainesville and Northwestern Railroad Co. (G. A. Austin and Sidney Smith, Receivers). J. E. Tifford, for Atlanta & West Point Railroad Co., Georgia Railroad, Atlanta, Birmingham & Coast Railroad Co., Louisville & Nashville Railroad Co., Nashville, Chattanooga & St. Louis Railway Co., Seaboard Air Line Railway Company, Central of Georgia Railway Co. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Co. et al. W. N. McGehee for Southern Railway Co. et al.

[fol. 728] Order Further Enlarging Time Within Which to Docket the Cases and File the Record Thereof

Upon the attached stipulation of counsel, and it appearing that the parties and their respective counsel are distant; and that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and pro-

ceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare, and certify the transcript of the record of this Court on the Appeal, and for other good cause shown:

It is ordered that the time in which the Georgia Public Service Commission, and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker, and Perry T. Knight, as Commissioners thereof, and the State Highway Board of Georgia, et al., complainants, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and their designation for the record of [fols. 729 & 730] additional appeal papers which have been filed, and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with the Clerk of the Supreme Court of the United States, heretofore enlarge- to and including Wednesday, the 15th day of October by order of this Court, be and it is hereby, further enlarged to and including Tuesday, the 18th day of November, 1930.

N. P. Bryan, United States Circuit Judge. Wayne G. Borah, United States District Judge. Saml. H. Sibley, United States District Judge.

Dated —— —, ——.

[fol. 731] [File endorsement omitted.]

[fol. 732] In United States Supreme Court

Stipulation re Exhibits—Filed Dec. 2, 1930

The exhibits numbered 1 to 244, inclusive, and numbered 98B to 199B, inclusive, as referred to in the certified copy of the transcript, and two unnumbered exhibits and the tariff schedules likewise there referred to, shall stand as original exhibits and shall be incorporated in the record upon appeal.

On the hearing of the appeal before the Supreme Court in the above-entitled cases, the original exhibits, together with the tariff schedules above referred to, need not be

[fol. 733] printed; but either side or any party by counsel, or the Court or any member thereof, may refer to such documents, or to any one or more of them or to any part or portion thereof, with the same force and effect as if the same had been printed in full in the transcript.

John S. Burchmore, Mac Asbill, J. S. B., Solicitors for Plaintiffs. Elmer B. Collins, E—, Special Assistant to the Attorney General, for the United States. Edward M. Reidy, for Interstate Commerce Commission. Alston, Alston, Foster & Moise, for Atlantic Coast Line Railroad Company et al. W. N. McGehee, J. S. B., for Southern Railway Company et al. Charles E. Cotterill, for Roquemore Gravel Company et al., Interveners. Alston, Alston, Foster & Moise, for Atlanta and West Point R. R. Co.

[fol. 734] [File endorsement omitted.]

[fol. 735] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Dec. 3, 1930

Now come the appellants, in the above entitled cause and in accordance with paragraph 9 of rule 13, state that the points on which they intend to rely in this court are as follows:

Points on Which Appellants Intend to Rely

The order of the Interstate Commeree Commission here involved, entered December 9, 1929, should have been enjoined and set aside by the District Court of the United States for the Northern District of Georgia, Atlanta Division, three judges sitting, for each and all of the reasons set out in the appellants' assignments of error (Record, 227-233), and from these assignments of error the points arise on which the appellants intend to rely in this court, as comprehended in the following summary:

1. The said District Court erred in not enjoining the aforesaid order of the Interstate Commerce Commission

here under attack, because the said order exceeds the powers which the said Commission constitutionally could exercise, and constitutes a regulation of and interference with intrastate commerce, not shown to affect or to be burdensome upon commerce among the states.

[fol. 736] 2. The said court erred in not enjoining the aforesaid order on the ground that said order was entered in violation of the fifth amendment to the Constitution of the United States, the due process clause, in the following particulars:

(a) The issues were limited under the Commission's orders instituting and reopening the inquiry so as to exclude the question of the reasonableness of the rates for the future for intrastate transportation in Georgia and for interstate transportation.

(b) While the Interstate Commerce Act puts the burden of proof on the carriers in any proceeding involving railroad freight rates proposed to be advanced, the said Commission did not require the carriers to assume such burden and refused to receive any evidence as to the reasonableness of the proposed increased rates which it afterwards prescribed as minimum rates for intrastate transportation in Georgia.

(c) There was not a full hearing and due investigation by the said Commission.

3. The said court erred in not enjoining the aforesaid order on the ground that the order was beyond the statutory power of said Commission, in the following respects:

(a) The said order requires numerous reductions in rates for intrastate transportation in Georgia, contrary to the limitation in paragraph (2) (a), of section 1 of the aforesaid Act.

(b) The said order creates numerous violations of the so-called long and short haul clause in paragraph (1) of section 4 of said Act.

[fol. 737] (c) Only discriminations which are unjust and preferences and prejudices which are undue or unreasonable are forbidden and made unlawful by paragraph (1)

of section 3 and by paragraph (4) of section 13 of the Act. There was no substantial evidence of similarity of transportation conditions and identity of carriers in connection with the state and interstate rates to sustain findings of undue preference and unjust discrimination, which said Commission is empowered to remove.

(d) The aforesaid order seeks to impose a rate formula on intrastate commerce in Georgia, and no power has been conferred on said Commission to prescribe rate-making formulas, as such, its authority under sections 15 and 13 of said Act being limited to prescribing reasonable and non-prejudicial rates, as maximum rates or as minimum rates, or both, for transportation services.

(e) The said Commission has power to prescribe intrastate rates only upon specific findings under section 13 of the Act; its findings in the aforesaid order are broad and sweeping; and there was no evidence of any violation of said Act in respect of the larger number of intrastate rates in Georgia.

4. The said court erred in not enjoining the aforesaid order on the ground that said Commission in entering said order acted arbitrarily and unjustly and prescribed rates for transportation wholly within the state of Georgia contrary to the evidence and without substantial evidence to support its action, in particulars as follows:

(a) The aforesaid order in effect restrains the Georgia Public Service Commission from requiring the carriers to [fol. 738] charge for intrastate transportation within the State of Georgia, rates which are the same in amount for corresponding distances of actual transportation, as interstate rates which the same carriers are permitted by the Interstate Commerce Commission to continue charging for interstate transportation.

(b) The aforesaid order purports to rest on the principle that the rates ought to be higher for so-called joint line movements, over the lines of two or more carriers, than for corresponding distances over the individual line of a single carrier; there was no evidence before the Commission tending to support such principle or to show that transportation of the commodities here involved, sand,

gravel, chert, etc., over joint lines is necessarily more expensive than over single line routes; and as to numerous other commodities, such as cement, brick, sugar and fertilizer, the Commission has prescribed scales of carload rates which are identical for single line and joint line movements.

(c) The aforesaid order makes distance the sole element for declaring discrimination against interstate commerce and for fixing and determining the rates to be charged within the State of Georgia and the order is arbitrary in that it ignores all other relevant facts.

(d) The aforesaid order prescribes minimum and maximum rates for actual services of transportation over actual routes of movement in intrastate commerce in Georgia, and the Commission prescribes only maximum rates for interstate transportation, the latter to be made, however, with regard to fictitious mileages, that is to say, with regard to distances over supposed routes that are not used and over which the carriers could not be required to operate as through routes under the limitation in para- [fol. 739] graph (4) of section 15 of the Interstate Commerce Act and of the Fifth Amendment to the Constitution.

(e) The aforesaid order is arbitrary because it was entered on a record which does not show the transportation conditions, or the circumstances and conditions under which the materials in question actually are transported for the respective intrastate movements within Georgia and interstate movements into and out of said State; and therefore the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates and interstate rates respectively.

(f) The aforesaid order creates and requires violations of the so-called long and short haul principle expressed in paragraph (1) of section 4 of the Act.

(g) The aforesaid order requires so-called short or weak lines of railroad, against their desire and without evidence of any violation of sections 3 or 13 of the Act, to increase their intrastate rates substantially above the rates of the standard lines and is therefore arbitrary.

5. The said court erred in not enjoining the aforesaid order on the ground that the said Commission in entering said order had in the record before it no substantial evidence to support the essential findings necessary to the entry of a valid order under the provisions of the said Act.

[fol. 740] Parts of the Record Necessary to be Printed.

And the appellants, pursuant to paragraph 9 of Rule 13, now designate to the Clerk of the Supreme Court, the following portions to be printed for the use of this Court in the consideration of the appeal herein of the record as certified by the District Court for the Northern District of Georgia:

The following pleadings, orders, decisions, etc., shall be printed in full, omitting captions and superfluous matter, namely:

Title of paper	Record pages
The original bill of complaint of Georgia Public Service Commission et al. in No. 563	1-15
Exhibit A to aforesaid bill, being the report and order of the Interstate Commerce Commission entered January 21, 1927	16-87
Exhibit B to aforesaid bill, being the order of Georgia Public Service Commission entered March 13, 1928	88-97
Exhibit C to aforesaid bill, being the Interstate Commerce Commission's order entered June 4, 1928	98-100
Exhibit D to aforesaid bill, being the said Commission's report and order entered December 9, 1929	103-132
Exhibit E to aforesaid bill, being petition of Georgia Public Service Commission for rehearing, etc	133-150
The order of the District Court, entered February 20, 1930, for the filing and service of the aforesaid bill and calling a three-Judge Court, etc	151
The answer of the United States to the bill in No. 563	152-154
The answer of the Interstate Commerce Commission to aforesaid bill	155-159

Title of paper	Record pages
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Appellants' statement of points on which appellants intend to rely and designating parts of record to be printed.	

Respectfully submitted.

Luther M. Walter, Nuel D. Belnap, John S. Burchmore, John S. Burchmore, 1522 First National Bank Bldg., Chicago, Illinois, Solicitors for Georgia Public Service Commission et al. Appellants.

Mac Asbill, Edgar Watkins, Mac Asbill, 403 Atlanta Trust Co. Building, Atlanta, Georgia, Solicitors for State Highway Board of George et al. Appellants.

[fols. 744 & 745] UNITED STATES OF AMERICA,
District of Columbia, ss:

Personally appeared before me, John S. Burchmore, who on oath states that he is one of the attorneys for the appellants, Georgia Public Service Commission, et al., in that certain case pending in the Supreme Court of the United States and returnable to the October term, 1930, entitled Georgia Public Service Commission, et al., v. United States of America, et al.; that in compliance with paragraph 9 of rule 13 of the rules of said court, affiant has designated the points on which appellants rely and the parts of the record necessary to be printed; that the original of such designation is herewith forwarded to the clerk of the Supreme Court of the United States; and that a copy of said original

this day has been served in person or sent by registered mail, postage paid, to each of the attorneys for the appellees, namely, Mr. Elmer C. Collins, Special Assistant to the Attorney General for the United States, Mr. E. M. Reidy, for the Interstate Commerce Commission, Mr. Robert C. Alston, for the Atlantic Coast Line Railroad Company, et al., Mr. W. N. McGehee, for Southern Railway Company, et al., and Mr. Charles E. Cotterill, for Roquemore Gravel Company, et al.

John S. Burchmore.

Subscribed and sworn to before me this 2nd day of December, 1930. E. M. Noland, Notary Public. (Seal)

[fol. 746] [File endorsement omitted.]

Endorsed on cover: File No. 35,477. N. Georgia D. C. U. S. Term No. 555. Georgia Public Service Commission, James A. Perry, Albert J. Woodruff, et al., etc., Appellants, vs. The United States of America and the Interstate Commerce Commission et al. Filed November 18, 1930. File No. 35,477.

FILE COPY

DEC 18

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1930.

No. 555

GEORGIA PUBLIC SERVICE COMMISSION and JAMES A. PERRY, ALBERT J. WOODRUFF, WALTER R. McDONALD, CALVIN W. PARKER, and PERRY T. KNIGHT, as COMMISSIONERS THEREOF,

Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION;

Appellees.

CONSOLIDATED WITH

STATE HIGHWAY BOARD OF GEORGIA, et al.,

Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Appellees.

RULE TWELVE STATEMENT

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BARNARD & MILLER PRINT, CHICAGO

IN THE

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v.

UNITED STATES OF AMERICA, et al.,

Appellees.

RULE TWELVE STATEMENT

Come now the Georgia Public Service Commission and James A. Perry, Albert J. Woodruff, Walter R. McDonald, Calvin W. Parker and Perry T. Knight, as Commissioners thereof, and, the State Highway Board of Georgia, *et al.*, appellants in the above entitled cause, and, in compliance with Rule 12 of the Rules of Practice of this court respectfully show the following reasons and authority for

the jurisdiction of this court to review the decree of the court below:

1. This court has jurisdiction over this appeal under Section 47, Title 28, U. S. Code, and also under Section 345, Title 28, U. S. Code, being Judicial Code, Section 238, as amended, relating to direct reviews by the Supreme Court.

2. The order sought to be reviewed (Rec., 224) was entered on June 25, 1930, by a court of three judges convened in accordance with the provisions of said Section 47, Title 28, U. S. Code, relating to review of orders of the Interstate Commerce Commission. (Rec., 151, 186.)

3. The suits in which the judgment was rendered from which the appeal was taken were brought to enjoin and set aside orders of the Intersate Commerce Commission and to enjoin the defendant railroads from filing and making effective any tariffs in accordance with such orders. The United States and Interstate Commerce Commission and interested railroads were made parties defendant. (Rec., 1-14, 172-185.) The separate bills of complaint of Georgia Public Service Commission, *et al.*, and of the State Highway Board of Georgia, *et al.*, set out in full the reasons why appellants claim that they were entitled to the injunction prayed. (Rec., 1-14, 172-185.)

The United States answered. (Rec., 152.) The Interstate Commerce Commission answered. (Rec., 155.) The Atlantic Coast Line Railroad Company, *et al.*, answered. (Rec., 160, 166.) The Roquemore Gravel Company, *et al.*, intervened as parties defendant. (Rec., 210.) The two causes were consolidated by order entered March 1, 1930. (Rec., 208.)

Three judges, one circuit judge and two district judges heard the case, and writing an opinion (Rec., 212-218),

denied the application for an interlocutory injunction. (Rec., 219.) The same judges later heard the application for a permanent injunction, and, writing an opinion (Rec., 220-223), denied the application and dismissed the bill. (Rec., 224.)

In accordance with Section 47, of Title 28, U. S. Code, and within thirty days an appeal was taken direct to this court from such order denying, after notice and hearing, the relief prayed and dismissing the bills. (Rec., 225.) Assignments of error were filed. (Rec., 227-233.)

4. This court has sustained its jurisdiction in numerous similar cases. Among such cases the following are typical: *Louisville & N. R. Co.* v. *United States*, 238 U. S. 1; *Railroad Commission of Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563; *Akron, C. & Y. R. Co.* v. *United States*, 261 U. S. 184, 189; *Virginian R. Co.* v. *United States*, 272 U. S. 65; *State of Alabama* v. *United States*, 279 U. S. 229.

Respectfully submitted,

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FILED
APR. 1 1931
CHARLES ELMORE CROPLEY
CLERK

IN THE

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Appellees.

BRIEF FOR GEORGIA PUBLIC SERVICE COMMISSION, APPELLANTS.

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JOHN S. BURCHMORE,
Attorneys for Appellants.

March 28, 1931.

BARNARD & MILLER PRINT, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1930.

No. 555

GEORGIA PUBLIC SERVICE COMMISSION and JAMES A. PERRY, ALBERT J. WOODRUFF, WALTER R. McDONALD, CALVIN W. PARKER, and PERRY T. KNIGHT, as COMMISSIONERS THEREOF,

Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION,

Appellees.

CONSOLIDATED WITH

STATE HIGHWAY BOARD OF GEORGIA, et al.,

Appellants,

v.

UNITED STATES OF AMERICA, et al.,

Appellees.

BRIEF FOR GEORGIA PUBLIC SERVICE COMMISSION, APPELLANTS.

OPINIONS.

The opinion of the specially constituted District Court (Circuit Judge Bryan and District Judges Borah and Sibley), refusing an interlocutory injunction, is reported

as *Georgia Public Service Commission, et al.* v. *United States, et al.*, 39 Fed. (2d) 167. The final opinion of the same court, holding valid the order of the Interstate Commerce Commission, and dismissing the bills, is reported under the same title, 42 Fed. (2d) 467.

The Commission's reports entering the orders herein sought to be set aside appear as *Rates on Chert, Clay, Sand, and Gravel within State of Georgia*, 122 I. C. C. 133 and 160 I. C. C. 309. (R. 12 and R. 88.)

JURISDICTION.

The suits here consolidated were commenced on February 20, 1930, under the Urgent Deficiency Act of October 22, 1913, (c. 32, 38 Stat. 219; U. S. Code, Title 28, Sec. 46), to annul and set aside certain orders of the Interstate Commerce Commission, dated January 21, 1927, and December 9, 1929.

The final decree of the District Court declining to set aside, annul or suspend the order of the Commission and dismissing the bills was entered June 25, 1930, by a court of three judges convened in accordance with the provisions of Sec. 47 of said Title 28, U. S. Code. (R. 172.) The appeal was allowed August 23, 1930. (R. 180.)

QUESTIONS.

The ultimate question in the case is whether the orders of the Interstate Commerce Commission here assailed are a valid and lawful exercise of the power and authority vested in the Commission, under the Interstate Commerce Act and the Federal Constitution, to set aside intrastate railroad freight rates theretofore fixed by authority of the State of Georgia.

Subordinate questions are involved, as follows:

(a) Whether the Commission made the essential findings, that the intrastate rates in question were unlawful, to support the order herein attacked;

(b) Whether the essential findings and conclusions were supported by substantial evidence in the record;

(c) Whether the Commission committed various errors of law in making and entering the order complained of; and

(d) Whether the decisions of the District Court are erroneous in upholding the Commission's reports and orders and dismissing the bills of complaint.

The foregoing questions are presented under numerous specific assignments of error which will be discused hereafter.

STATUTES.

The only statutes involved in this case, save the procedural laws governing the filing of the suit and the appeal, are the Interstate Commerce Act and Acts amendatory thereof. The material sections thereof are printed as Appendix I to this brief.

STATEMENT OF THE CASE.

(a) Allegations of the Bills of Complaint.

On February 20, 1930, the appellants, Georgia Public Service Commission, and its individual members, filed their bill of complaint in No. 563 below, (R. 1), to enjoin the orders entered January 21, 1927, and December 9, 1929, by the Commission, which orders, in substance, required the substitution on intrastate traffic within the State of Georgia of the same scheme or basis of rates which the Commission had specified as maximum for interstate application, in place of the basis of rates then in force within the State by virtue of orders of the Georgia Public Service Commission.

The appellants, State Highway Board of Georgia, *et al.*, filed contemporaneously their bill in No. 656 below, in which the averments are substantially the same and the same relief is sought. (R. 148.) The two bills were consolidated by the court for hearing and final disposition. (R. 159.)

Grounds of Error Stated in Bill.

The bill of complaint in No. 563 sets forth 11 grounds of error in the Commission's action, (R. 8), upon which the District Court was asked to permanently enjoin and set aside the Commission's orders. They are the foundation for the principal assignments of error in the appeal to this court and are as follows:

(a) Aforesaid reports and orders constitute an unlawful invasion of the sovereign rights of the State of Georgia reserved to it by the Constitution of the United

States, and of the citizens of the said State of Georgia, and are without warrant or authority under the Constitution of the United States.

(b) Aforesaid reports and orders constitute an unlawful exercise of power by said Interstate Commerce Commission, without warrant or authority under the Constitution of the United States or the Interstate Commerce Act, as amended.

(c) Aforesaid reports and orders are arbitrary and unlawful in that in substance they purport and seek to restrain and enjoin the Georgia Public Service Commission from requiring the railroads to charge, for intrastate transportation of sand, gravel, stone, etc., within the State of Georgia, rates which are the same in amount for corresponding distances of actual transportation, or on the same basis, as interstate rates which the aforesaid carriers are permitted by said Interstate Commerce Commission to continue charging for interstate transportation into and out of said State of Georgia and in territory contiguous thereto.

(d) Aforesaid reports and orders are arbitrary and unlawful in that they purport to and do impose a formula to govern rates for transportation of said materials within the State of Georgia, not in harmony with a lawful order heretofore entered by the Georgia Public Service Commission prescribing maximum rates for said intrastate transportation; and said Interstate Commerce Commission has no power conferred on it by law to prescribe a rate-making formula, as such, its authority being limited to prescribing reasonable rates, as maximum rates or as minimum rates.

(e) Aforesaid reports and orders are arbitrary and unlawful in that they prescribe rates for actual services of transportation over actual routes of movement in in-

trastate commerce within the State of Georgia and also in interstate commerce, to be made with regard to fictitious mileages, that is to say, with regard to the distances over routes that are not used and which neither the Interstate Commerce Commission nor the Georgia Public Service Commission could require the carriers to operate as through routes for the transportation of property without infringement of the constitutional rights of said carriers and of their rights under paragraph (4) of Section 15 of the Interstate Commerce Act.

(f) The aforesaid reports and orders are erroneous in law and the Commission was without jurisdiction to enter them in so far as they purport to fix rates for the intrastate transportation aforesaid, because under the Commission's order instituting the aforesaid inquiry in No. 17517, under the allegations of the complaint in the aforesaid case No. 17763, and under the aforesaid order of June 4, 1928, reopening the said proceedings for further hearing and investigation, the issues were limited so that the Commission did not have jurisdiction to enter a valid order under the terms of Section 13, or of any other section of the Interstate Commerce Act.

(g) Aforesaid reports and orders are erroneous and invalid because the record of evidence on which they were entered does not show the transportation conditions, or the circumstances and conditions under which aforesaid materials actually are transported for the respective intrastate movements within the State of Georgia and interstate movements into and out of said state, and therefore the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates, on the one hand, and under the interstate rates, on the other hand.

(h) The report and order are erroneous because there

is no substantial evidence of record in the proceedings wherein they are entered warranting or requiring a finding that the rates for the transportation of the materials in question now charged, or which are made or imposed by authority of the State of Georgia, or any of said rates, for said intrastate transportation, cause any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate of foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce; and in fact, the aforesaid intrastate rates are not preferential, or prejudicial, or discriminatory, or burdensome.

(i) The aforesaid reports and orders are erroneous and invalid because the Interstate Commerce Commission therein undertakes to require reductions in intrastate rates within the State of Georgia, which are wholly beyond the jurisdiction of said Commission to reduce; and because the rates therein required tend to create and will create unjust discriminations and undue preferences as among different and competing shippers and producers of said materials in Georgia, in violation of the statutes of said state governing such intrastate transportation.

(j) The aforesaid reports and orders are erroneous and invalid because they are not supported by evidence and they are contrary to the manifest weight of the evidence in these proceedings.

(k) Aforesaid reports and orders are unlawful and invalid for other and manifest errors of law and of fact.

The United States of America and the Interstate Commerce Commission, as defendants, joined issue on the

material averments of the bills, admitting only certain of the recitals of fact which are self-evidently beyond controversy. (R. 133, 135.) Intervening petitions and answers in harmony with those of the defendants were presented on behalf of certain railroad companies which were respondents in the proceedings before the Commission. (R. 138, 143.)

(b) The proceedings before the Commission.

These cases originated in a petition filed by the Atlantic Coast Line and eight short line carriers operating in the State of Georgia, upon which the Commission instituted its proceeding of inquiry under its docket No. 17517, by an order of investigation dated October 5, 1925. The petition of these railroads was directed against an order which had been entered by the Georgia Commission on February 25, 1925, prescribing maximum carload rates on these commodities and the carriers sought relief under Sections 3 and 13 of the Interstate Commerce Act. (R. 188.) The Commission's order of inquiry made all the railroads operating within the State of Georgia respondents and notice was served upon the state authorities as contemplated by Section 13. (R. 204.)

There were consolidated with No. 17517, for hearing and decision, a number of formal complaint cases, some of which involved issues foreign to the present inquiry. No. 17763 was the only one of the group directed against the rates in Georgia, and it contained a so-called Section 3 averment with respect to the interstate rates from Montgomery, Alabama, and Chattanooga, Tennessee, which were averred to be prejudicial as compared with intrastate rates in Georgia. (R. 186.)

After protracted hearings the Commission entered its

original report and order of January 21, 1927, 122 I. C. C. 133. (R. 12.) The Commission therein prescribed certain bases of rates on these commodities as maximum for interstate application within the southeast, to a limited and defined extent. It was suggested that there should be no different rate level interstate as against intrastate rates in that territory. The Commission found that the record then made would not sustain a finding of unjust discrimination against interstate commerce in the Georgia rates theretofore in effect. (R. 59.) It expressed the expectation that the Georgia Commission would co-operate in authorizing such revisions as might be necessary to bring the rates in that state into harmony with the interstate adjustment therein approved, which adjustment was a maximum basis of interstate mileage scales. (R. 59.)

Thereafter, the Georgia Commission had public hearings which resulted in the issuance by it of an order dated March 13, 1928. (R. 76.) This order prescribed a new basis of rates on these commodities within the State of Georgia, in the form of mileage scales to govern all movements, single-line as well as joint-line, throughout the state, one scale governing movements over standard lines, another scale governing transportation over so-called weak lines. These scales differed in certain respects from the interstate maximum scales prescribed by the Interstate Commerce Commission in its order of January 21, 1927.

The principal carriers operating within the State of Georgia thereupon presented their petition to the Commission, complaining in effect that the rates required to be maintained by the order of the Georgia Commission caused undue preference to state shippers and state traffic and unjust prejudice against interstate shippers

and interstate traffic. (R. 211.) The Commission thereupon entered its order of June 4, 1928, and reopened the cases on the sole question of alleged violation of the substantive provisions of Section 13, as to an unlawful preference of state and undue discrimination against interstate traffic. (R. 240.)

After further hearings in November, 1928, which were limited to the question of unjust discrimination, briefs were filed and oral argument had and the Commission entered its further report and order of December 9, 1929, 160 I. C. C. 309. (R. 88.) Petition for rehearing was filed by the Georgia Commission under date of January 11, 1929. (R. 118). This petition was summarily denied (R. 249); the carriers filed their new schedules of rates in ostensible compliance with the Commission's reports and orders; and the Georgia Public Service Commission filed this bill.

(c) The major essentials of the Findings of the Commission.

The two reports and orders of the Commission which are the occasion of this proceeding may be summarized as to their major essentials:

(a) In its original report and order of January 21, 1927, the Commission prescribed only maximum rates, as reasonable for interstate transportation of sand, gravel, etc., in Georgia territory.* No minimum rates or intrastate rates were prescribed. The maximum rates so prescribed were higher in a great many cases than the carriers theretofore had voluntarily maintained for interstate transportation. They were lower in many instances than the carriers had proposed.

*The report did not prescribe rates generally throughout the southeastern states.

(b) The maximum rates so prescribed were in the form of mileage scales, which purported to recognize a difference between single line hauls and joint line hauls, that is to say, between transportation performed over one railroad and transportation performed over two or more railroads.

(c) The formula which the Commission prescribed for the application of these mileage scales, provided that they were to be applied against the mileage over the shortest rail routes between point of origin and destination by which carload freight could move without transfer of lading. The mileage over the actual routes of transportation was not necessarily considered.

(d) The decision contemplated that longer lines would publish the same rates as shorter lines between the same points; and this is the invariable practice in the interstate schedules filed under the order, except in cases of very unusual circuity.

(e) The aforesaid decision further provided a higher basis of maximum rates where the transportation is performed, wholly or in part, over certain so-called short lines or weak lines, which were named in an appendix to the report.

(f) The decision also found that the intrastate rates for transportation within the State of Georgia had been prescribed by the Georgia Commission in an order dated February 25, 1925, and that considering the results brought about by said order, it could not be found on the record to have brought about a situation unjustly discriminatory against interstate commerce. (122 I. C. C. 169.)

(g) The subsequent report and order of the Interstate Commerce Commission dated December 9, 1929 (160 I. C. C. 309), found in very general terms that the

state rates in Georgia were in violation of Sec. 13 of the Interstate Commerce Act in that they were unduly preferential to state shippers and state commerce and unduly prejudicial to interstate shippers and interstate commerce, insofar as they were lower, distance considered, than the interstate rates. These findings were general, dealing with the adjustment as a whole, and not specific as to any particular rates. A great many of the rates in Georgia were recognized by the report as being in entire harmony with the interstate rates.

(h) The aforesaid decision of December 9, 1929, required the removal of the condemned discrimination and the establishment by the respondent railroads of rates for intrastate transportation within the State of Georgia, (a) not lower, distance considered, than those contemporaneously applied on interstate traffic; and (b) not exceeding the scales of rates set forth in the appendix to the order, namely, the scales which had been prescribed as maximum for interstate application in the previous order of January 21, 1927. No element except distance is specified in the findings.

(i) The said decision of December 9, 1929, did not amend the previous decision as to the rates prescribed as maximum for interstate transportation. It simply provided both a maximum basis and a minimum basis of rates for intrastate application in Georgia and in substance set aside the decision of the Georgia Commission entered March 15, 1928. As we shall show in detail in the argument, this minimum basis is vague, indefinite and uncertain.

DEFICIENCIES IN RECORD BEFORE COMMISSION.

As to the proceedings had before the Commission and the record of evidence upon which the orders in question were entered, we respectfully invite the court's attention to these features:

(a) The order of investigation under which the Commission conducted its inquiry which resulted in the report of December 9, 1929, was limited to the question of undue prejudice and unjust preference and did not involve the reasonableness of the rates for interstate or intrastate transportation. (R. 204).

(b) In the investigation that preceded the order dated December 9, 1929, which purports to nullify the Georgia Commission's order, the Interstate Commerce Commission refused to receive competent evidence tending to show what would be just and reasonable rates for the intrastate and interstate transportation aforesaid for the future.

(c) While the burden of proof was upon the respondent carriers under Section 15 of the Act to justify the reasonableness of rates proposed to be advanced in these proceedings, such evidence was not offered or received and such burden was not met by respondents in the record.

(d) The record upon which the aforesaid orders were entered contains no evidence showing or tending to show that transportation over joint line routes is more difficult or expensive than over single line routes of corresponding distances.

(e) The aforesaid record contains no evidence whatsoever of the transportation condifions respecting the intrastate transportation of these materials in Georgia to which the intrastate rates fixed by the Georgia Commis-

sion and those prescribed by the Interstate Commerce Commission's order are applicable.

Commission's Record Presented to Court.

The evidence presented in support of the bill of complaint is the record made before the Commission, consisting of the essential pleadings, interlocutory as well as final reports and orders, the transcript of the testimony and the exhibits. It is stipulated by all counsel (R. 183) that the narrative of testimony, as now contained in the printed record, is a true and correct transcript of all of the oral testimony before the Commission which is relevant to the subject-matter of this appeal. It was further stipulated (R. 183 and R. 815), that the copies filed with the District Court of the original exhibits which had been considered by the Commission need not be printed but that either side, or any party by counsel, or the court, or any member thereof, may refer to such documents with the same force and effect as if the same had been printed in full in the record.

In addition to the record before the Commission, the District Court received in evidence copies of the schedules in which the interstate rates in force as of the date of the Commission's decision were published and filed with the Interstate Commerce Commission, as required by Section 6 of the Interstate Commerce Act, together with a copy of the new schedule filed with that Commission, wherein the carriers simply published the Commission's maximum mileage scale to govern intrastate movements in Georgia, effective March 3, 1930. These schedules may also be considered by the court and counsel, being expressly covered by the foregoing stipulation. (R. 183, R. 815.)

ASSIGNMENT OF ERRORS RELIED UPON.

The following assignments of error are relied upon by appellants, Georgia Public Service Commission *et al.* (R. 174, 175, 176, 177, 178, 179):

The court erred:

1. In not enjoining the aforesaid order of the Interstate Commerce Commission here under attack, because the said order exceeds the powers which the said Commission constitutionally could exercise, and constitutes a regulation of and interference with intrastate commerce, not shown to affect or to be burdensome upon commerce among the states.

2. In not enjoining the aforesaid order on the ground that it was entered in violation of the fifth amendment to the Constitution of the United States, the due process clause, in the following particulars:

(a) The issues were limited under the Commission's orders instituting and reopening the inquiry so as to exclude the question of the reasonableness of the rates for the future for intrastate transportation in Georgia and for interstate transportation.

(b) While the Interstate Commerce Act puts the burden of proof on the carriers in any proceeding involving railroad freight rates proposed to be advanced, the said Commission did not require the carriers to assume such burden and refused to receive any evidence as to the reasonableness of the proposed increased rates which it afterwards prescribed as minimum rates for intrastate transportation in Georgia.

(c) There was not a full hearing and due investigation by the said Commission.

3. In not enjoining the aforesaid order on the ground that the order was beyond the statutory power of said Commission, in the following respects:

(a) The said order requires numerous reductions in rates for intrastate transportation in Georgia, contrary to the limitation in paragraph (2)(a), of Section 1 of the aforesaid Act.

(b) The said order creates numerous violations of the so-called long and short haul clause in paragraph (1) of Section 4 of said Act.

(c) Only discriminations which are unjust and preferences and prejudices which are undue or unreasonable are forbidden and made unlawful by paragraph (1) of Section 3 and by paragraph (4) of Section 13 of the Act. There was no substantial evidence of similarity of transportation conditions and identity of carriers, in connection with the state and interstate rates to sustain findings of undue preference and unjust discrimination, which said Commission is empowered to remove.

(d) The aforesaid order seeks to impose a rate formula on intrastate commerce in Georgia, and no power has been conferred on said Commission to prescribe rate-making formulas, *as such;* its authority under Sections 15 and 13 of said Act is limited to prescribing reasonable and non-prejudicial rates, as maximum rates or as minimum rates, or both, for transportation services.

(e) The said Commission has power to prescribe intrastate rates only upon certain and specific findings under Section 13 of the Act; its findings in the aforesaid order are broad and sweeping; and there was no evidence of any violation of said Act in respect of the larger number of intrastate rates in Georgia.

4. In not enjoining the aforesaid order on the ground that said Commission in entering said order acted arbi-

trarily and unjustly and prescribed rates for transportation wholly within the State of Georgia contrary to the evidence and without substantial evidence to support its action, in particulars as follows:

(a) The aforesaid order in effect restrains the Georgia Public Service Commission from requiring the carriers to charge, for intrastate transportation within the State of Georgia, rates which are the same in amount for corresponding distances of actual transportation, as interstate rates which the same carriers are permitted by the Interstate Commerce Commission to continue charging for interstate transportation.

(b) The aforesaid order purports to rest on the principle that the rates ought to be higher for so-called joint line movements, over the lines of two or more carriers, than for corresponding distances over the individual line of a single carrier; there was no evidence before the Commission tending to support such principle or to show that transportation of the commodities here involved, sand, gravel, chert, etc., over joint lines is necessarily more expensive than over single line routes; and as to numerous other commodities, such as cement, brick, sugar and fertilizer, the Commission has prescribed scales of carload rates which are identical for single line and joint line movements.

(c) The aforesaid order makes distance the sole element for declaring discrimination against interstate commerce and for fixing and determining the rates to be charged within the State of Georgia and the order is arbitrary in that it ignores all other relevant facts.

(d) The aforesaid order prescribes minimum and maximum rates for actual services of transportation over actual routes of movement in intrastate commerce in Georgia, and the Commission prescribes only maximum

rates for interstate transportation, the latter to be made, however, with regard to fictitious mileages, that is to say, with regard to distances over supposed routes that are not used and over which the carriers could not be required to operate as through routes under the limitation in paragraph (4) of Section 15 of the Interstate Commerce Act and of the Fifth Amendment to the Constitution.

(e) The aforesaid order is arbitrary because it was entered on a record which does not show the transportation conditions, or the circumstances and conditions under which the materials in question actually are transported for the respective intrastate movements within Georgia and interstate movements into and out of said state; and therefore the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates and interstate rates respectively.

(f) The aforesaid order creates and requires violations of the so-called long and short haul principle expressed in paragraph (1) of Section 4 of the Act.

(g) The aforesaid order requires so-called short or weak lines of railroad, against their desire and without evidence of any violation by them of Sections 3 or 13 of the Act, to increase their intrastate rates substantially above the rates of the standard lines and is therefore arbitrary.

5. In not enjoining the aforesaid order on the ground that the said Commission in entering said order had in the record before it no substantial evidence to support the essential findings necessary to the entry of a valid order under the provisions of the said Act.

SUMMARY OF ARGUMENT.

The appellants concede that if the final report and order of the Commission contains findings of real and substantial discrimination created by low rates on sand, gravel, stone, etc., within Georgia, to the undue prejudice of interstate commerce, or findings that the state rate basis is lower than the interstate and is unduly burdensome on interstate commerce, such report and order should be approved and enforced by the courts, *provided* there was substantial evidence to support such findings.

The appellants contend, however, that there was no substantial evidence presented to the Commission of actual unjust discrimination against interstate commerce, in respect of the measure of the rates generally charged for actual services of transportation, intrastate versus interstate, and there was no evidence of a substantial burden on interstate commerce from the state rates on these materials in Georgia.

The appellants further contend that the findings of the Commission amount to a sweeping wholesale condemnation of state rates, or rather the formula on which the state rates in Georgia were constructed, and a blanket requirement to substitute the formula worked out by the Interstate Commerce Commission, for the basis theretofore ordered by the State Commission. The order required reductions in numerous state rates, advances in numerous others, and no changes in a great many of the state rates, without any clear definition of why certain rates should be required to be advanced and certain others remain unchanged. Manifestly the Commission had no constitutional power to order any reductions in state rates.

In other words, this case does not present a situation in any respect similar to that in the leading *Shreveport Case* (*Houston, East and West Texas Ry. Co.* v. *United States*, 234 U. S. 342), or in other cases in which this court has upheld the action of the Interstate Commerce Commission in setting aside state rate schedules which were in conflict with the interstate rate structure.

It will be remembered that in the *Shreveport Case*, the Texas Commission had endeavored to build a rate wall around the State of Texas and a notoriously low level of rates was made by that Commission, for the avowed purpose of favoring its commerce against the interstate traffic. But in the present case, the whole history of the action and attitude of the Georgia Commission has been in the direction of building up the revenues of these interstate carriers on these materials, advancing cut-throat competitive rates which various carriers had maintained, one competing against another, and to put the rate schedules on a fairly harmonious general basis. The order of the Georgia Commission fixing the maximum rates on these materials within Georgia, entered March 13, 1928, and against which the Commission's order is directed, was in complete harmony *in principle* with the repeated decisions of the Interstate Commerce Commission, in the treatment of rates for so-called joint-line hauls as distinguished from single-line movements.

The Interstate Commerce Commission issued its final order, in substance setting aside the Georgia Commission basis, arbitrarily and capriciously and without good grounds for that action, although the carriers were freely discounting the full measure of the interstate scale wherever one carrier competes against another.

The interstate rate structure on these materials is controlled by *maximum* scales of rates fixed by the Com-

mission. One characteristic is, that between any given points of origin and destination *either* the shortest single line of railway, *or*, the shortest route or theoretical route composed of parts of two or more railways over which carload traffic *may* move without transfer of lading, may be the *rate-making route*. The prescribed scales are applied to the distances over such routes, whether or not any traffic moves over them. Thereupon, all routes which participate in traffic between those points maintain the same rates, ascertained by applying the proper one of the Commission's scales to the mileage over the so-called rate-making route.

It is therefore a further feature of the interstate rate structure that the average level of the interstate rates is substantially below the Commission's scale rates applied against the actual distances of interstate transportation since the shortest possible routes are used to determine the going rate under the scale and then that rate is applied over all routes.

The outstanding characteristic of the Commission's plan of rates on these materials, both state and interstate, is a recognition or pretended recognition of a difference between joint-line and single-line movements, with a higher rate basis for the former than the latter. We say pretended recognition, because the principle commonly gives way and is generally expected to do so in the meeting over any route of the rate made by another route between the same points, whether the one be single-line and the other joint-line, or vice versa, or whether both be of the same nature, *i. e.*, single or joint line. But the principle supposed to control and which distinguishes the Commission basis on sand and gravel, is the higher joint-line scale than single-line scale. This characteristic is absent from the Commission's rate bases which it pre-

scribed in other cases for class rates and for commodity rates on cement, brick, fertilizer, sugar, etc.

We ask the court to observe that the findings of the Commission could not have been broader and more comprehensive than they were drawn, and while failing to condemn all of the state rates, they also fail to specify the circumstances which shall determine whether given state rates are preferential, or to specify the degree of such preference and with reasonable definiteness the manner in which it shall be removed. It must be borne in mind that ever so many of the state rates have not been changed by the carriers in their schedules ostensibly complying with the Commission's decision here under attack; and the changes made in other rates has been by applying the full maximum scale rates specified in the Commission's order with no discount therefrom, save where a competing line between a given point of origin and destination meets the rate of another line between the same points, the latter not necessarily being the shorter line, but simply one which would take a lower rate under the Federal Commission's formula.

The Commission's final order pretends to find an unjust discrimination against interstate commerce, yet many of the rates in Georgia which have been raised could not possibly have been held to infringe against any interstate rates.

The Commission's order pretends to prescribe a minimum basis for intrastate rates in Georgia, yet this basis is vague, indefinite and uncertain and is clearly higher than the interstate rates actually charged for the same distances.

The Commission's order pretends to deal with an impairment of the revenues of the carriers. But there was no real showing that the substitution of the Commission's basis, in lieu of the state rates heretofore in effect, will increase the revenues of the carriers on state traffic; and

there is no showing that there is not a much greater impairment of the aggregate railroad revenues through the charging on interstate shipments of rates much lower than the Commission's scale would make for the actual distances of transportation.

The Commission's final report and order dealing with the intrastate rates in Georgia would not be valid and enforceable if the transportation to which they applied were in point of fact strictly interstate and therefore within the primary jurisdiction of the Commission. By this we mean to say, that the Commission's authority over interstate transportation, under the terms of the Act, is limited to prescribing rates for the future where existing rates are expressly found to be, unjust and unreasonable in violation of Section 1, unduly discriminatory in violation of Section 2, or unjustly prejudicial or unduly preferential in violation of Section 3, or greater for longer than for shorter distances in violation of Section 4. Unjust discrimination, undue prejudice and unjust preference are established only where certain elements are found to be present, namely, the discrimination must flow from a common source, the circumstances and conditions must be substantially similar and these and other essential facts are required to be established by testimony in a hearing after formal complaint. If we assume that all state lines were wiped out, many of the rates within Georgia which have been advanced under the Commission's final order on the theory that they are in conflict with the interstate rate structure, have not been shown by any evidence before the Commission to apply under similar circumstances and conditions or over the lines of the same carriers as any other interstate rates, higher for comparable distances.

As to the numerous rates within Georgia reduced by the Commission's order, there was no evidence that for

the service of transportation performed thereunder these rates were unjust and unreasonable.

For these reasons, and in this sense we say that the Commission's order herein attacked would not be enforceable against carriers not willing to comply therewith, if all of the transportation governed thereby were strictly interstate and no constitutional question of federal authority over state commerce were involved.

The Commission's disposition of these proceedings conflicts in principle with its decisions in other cases involving rates within the southeastern territory. The decision herein purports to find that transportation over joint-line routes is more expensive than over single-line routes, simply because the routes are joint-line, although it freely recognizes and permits joint-line routes to compete with single-line routes for traffic under equal rates. On the other hand with respect to the entire underlying class rate structure and the commodity rates on cement, brick, fertilizer, sugar, petroleum, etc., etc., the Commission has made no such distinction and has required a common scale on which to govern alike joint-line and single-line movements, recognizing the desirability of having all routes, not unduly circuitous, competing for traffic.

The appellants contend that the District Court erred in not granting the relief prayed for in the bill, in not setting aside the Commission's order, which was invalid for all of the reasons herein suggested, and in not enjoining the schedules which the carriers have made effective on state traffic in Georgia. These schedules are contrary to the state statutes and the State Commision's orders thereunder and exceed any requirements of the Commission's assailed order, however that order might be construed.

ARGUMENT.

I.

The Commission's reports and orders are void because they are an unlawful invasion of the sovereign rights of the State of Georgia in the regulation of intrastate commerce.

The regulation of rates for railroad transportation within the State of Georgia as within any other state is primarily vested in the state Commission. The power of the Federal government as exercised by the Interstate Commerce Commission is secondary with respect to such state rates and extends only to the correction of an undue preference to state shippers or state commerce or an undue burden on interstate commerce. Nor has the Federal Commission any authority, either primary or secondary, to deal (a) with excessive charges for transportation within a state, or (b) with purely intrastate discriminations and preferences, where one state shipper or locality may be prejudiced and another state shipper or locality unduly preferred by a maladjustment purely within the state.

The Commission has no general authority to regulate intrastate rates and the mere existence of a disparity between particular rates on intrastate and on interstate traffic does not warrant the Commission in prescribing intrastate rates.

Arkansas Railroad Commission v. *C., R. I. & P. Ry. Co.*, 274 U. S. 597.

State of Florida v. *United States*, decided January 5, 1931. Adv. Sheets, Oct. Term, 1930, No. 5, page 212.

An order of the Interstate Commerce Commission should not be given precedence over a state statute or the requirement of a state Commission in regulating state rates, unless and except insofar as said order conforms to a high standard of certainty.

Railroad Commission of Wisconsin v. *Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563, 580; 66 L. Ed. 371.

Illinois Central R. R. Co. v. *Public Utilities Commission of Illinois*, 245 U. S. 493, 510; 62 L. Ed. 425.

American Express Company v. *South Dakota*, 244 U. S. 617, 625; 61 L. Ed. 1352, 1358.

Arkansas Railroad Commission v. *Chicago, Rock Island & Pacific R. R. Co.*, 274 U. S. 597, 603; 71 L. Ed. 1224, 1228.

The Minnesota Rate Cases, Simpson v. *Shepard*, 230 U. S. 352; 57 L. Ed. 1511.

The Shreveport Case, Houston, East and West Texas Ry. Co. v. *United States*, 234 U. S. 342; 58 L. Ed. 1341.

The Commission's order definitely and intentionally requires reductions in numerous state rates in Georgia and changes inter-relationship of many purely state rates.

In the exercise of the functions vested in it by the statutes and under the constitution of the state, the Georgia Commission entered its order of March 13, 1928 (R. 76), in which it prescribed certain rates as reasonable maximum rates for the intrastate transportation of sand and gravel in Georgia and for the purpose of removing purely intrastate discriminations, namely, preferences to certain traffic and certain shippers within the state and prejudice against certain other traffic and shippers within the state. The Georgia Commission announced that under the conditions developed in the record before it and covered by its findings, the rates for

joint-line hauls should not be higher, simply because the hauls were joint-line, than the rates for single-line hauls of the same distance, and that the maintenance of higher joint-line than single-line rates created preferences and discriminations within the state. (R. 79-80.)

The Interstate Commerce Commission's reports and orders here under question were intended to set aside and to nullify the order of the Georgia Commission and resulted in the re-creation of discriminations as among Georgia shippers which that Commission had condemned and ordered removed, and with which the Federal Commission has no jurisdiction to deal.

This was sought to be accomplished by the terms of the order of the Commission, which has been interpreted by the carriers as requiring higher rates for joint-line hauls than for single-line hauls of equal mileage, over so-called *rate-making routes.*

At the same time, the railroads as engaged in interstate transportation are allowed to continue joint-line rates over actual joint-line routes of movement which are the same as the rates for single-line movements between points over other roads, and which, distance considered, are therefore *lower than the interstate single-line basis.*

In other words, the Commission's order ties the hands of the Georgia Commission in requiring certain rates to be applied on intrastate transportation in Georgia and at the same time permits the carriers voluntarily to charge that same measure of rates for the same distance of interstate transportation which the Georgia Commission cannot enforce in Georgia.

An illustration of how the Commission order works out is afforded by taking Geneva, Georgia, as an assumed destination for a road-building project and the competitive materials of washed gravel from Montgomery, Ala-

bama, or crushed stone from Sparta, Georgia, the former an interstate, the latter an intrastate movement. This situation is pictured on the first of a series of charts, in Appendix 3 to this brief.

In this and subsequent illustrations we have taken points of origin and destinations shown in exhibits of record before the Commission, the distances and rates all appearing in the exhibits and the routes are depicted on maps in evidence, particularly Map Exhibit 161-B. (R. 732.)

Geneva is a local point on the Central of Georgia Railroad between Fort Valley and Columbus, Georgia. It is 125 miles by that line from Montgomery. It is also 125 miles from Sparta, Georgia, via Georgia Railroad to Macon, Central of Georgia beyond. The Georgia Commission's scale makes $1.10, the same as from Montgomery under the interstate single-line scale for the same distance. (R. 732, 117.)

The interstate order has resulted in raising the Sparta rate to Geneva to $1.25, because that is the joint-line scale for that distance. But if there happened to be a joint-line route from Montgomery to Geneva of 125 miles or more, the Commission would permit the carriers over that route to charge $1.10, the same as the single-line rate. (R. 108-9.) As a matter of fact, we can point out any number of 125-mile actual joint-line hauls interstate for which $1.10 or less is charged.

This illustration would not be complete if we did not point out that both of the carriers involved in this intrastate movement, (the Georgia Railroad and the Central of Georgia), freely participate in many interstate rates where they have discounted the full measure of the Commission's maximum interstate scale, as applied to the actual distance of transportation. For example, from

Chattanooga to Athens, the Georgia Railroad joins with the Nashville, Chattanooga & St. Louis in a through route of 272 miles for which it is only charging a rate of 150 cents on sand and gravel, although the Commission's joint-line scale rate for that distance is 170 cents. They have discounted the scale rate 20 cents per ton, because the Southern Railway has a single-line route, only a few miles shorter, from Chattanooga to Athens, for which the scale rate is 150 cents for the distance of 272 miles. The Central of Georgia likewise is participating in many interstate rates which are substantially lower than the Commission's scale would make when applied to the distance over its rails, such as the rate from Montgomery to Waycross, where the Central of Georgia, Southern and Atlantic Coast Line form a route of 382 miles over which the rate is 165 cents, although the Commission's maximum scale would make 190 cents.* If the Georgia Railroad can discount the scale 20 cents for movements over its line from Chattanooga to Athens, and if the Central of Georgia can similarly discount the scale rate 25 cents from Montgomery to Waycross, we fail to see any compelling reason why the State of Georgia cannot require a rate for movements from Geneva to Sparta, which happens to be 15 cents less than the maximum interstate scale for that distance and which is necessary in the opinion of that Commission in order that the producer at Sparta may compete for business at Geneva with producers located at other points in Georgia, and which that Commission further regards as affording the carriers sufficient revenue for the service performed.

For a companion illustration, we invite attention to the second chart printed in Appendix 3, which covers the interstate routes from Chattanooga, Tennessee, to

*The so-called rate making route is only 261 miles, for which the scale rate is 145 cents. (Doss' Exhibit 100-B, R. 624.)

Hiram, Georgia, a competitive station reached by the Southern Railway and the Seaboard. The rate is $1.10, which is made because of the 125-mile single-line route of the Southern Railway. It also applies via the competitive joint-line routes of N. C. & St. L. to Cartersville and Seaboard Air Line to destination, 135 miles, or Central of Georgia to Cedartown, Seaboard beyond, 132 miles, for which distances the joint-line scale rate would be $1.35. But the carriers in these routes meet the single-line scale of $1.10.† (R. 681; Burke's Exhibit 155-B; Crane's Exhibit 118-B; R. 658.)

There is a quarry at Graysville, Georgia, on the Nashville, Chattanooga and St. Louis Railroad just south of the Tennessee state line. (R. 417, 681, 746; Burke's Exhibit 159.) If this quarry wants to ship to Hiram, Georgia, its distance is 118 miles joint-line via Cartersville and the Seaboard Air Line. The interstate orders are construed as requiring the full joint-line scale rate for this distance, which requires the state producer at Graysville to pay $1.25, although his Chattanooga competitors north of him ship through on the interstate rate of $1.10, which is carried by this route to equalize with the single-line rate of the Southern Railway for its longer mileage. Under the tariff that the carriers have published in Georgia, they have clearly established a rate of $1.25 from Graysville to Hiram. The same situation exists to Rockmart.

The Graysville, Georgia producer also has to meet the competition of the interstate shipper from Birmingham,

†The Georgia Commission is prevented from requiring a $1.10 rate as maximum on the two-line route from Sparta, Georgia, to Geneva, Georgia, under which the producer in Georgia would be able to meet the competition of the one-line producer from Montgomery, for an equal distance. Yet the same railroad, the Central of Georgia, whose joint-line rate between those points must be not less than $1.25, engages in a joint-line interstate rate of $1.10 for 7 miles longer haul, from Chattanooga to Hiram!

who gets into Hiram on a single-line haul of 141 miles via S. A. L. and enjoys a single-line scale rate of $1.26. (Exhibit 123-B, R. 662.)

ALABAMA SHIPPERS ENJOY ADVANTAGEOUS SINGLE-LINE ROUTES.

The record will show that the shippers of Montgomery and Birmingham, Alabama, and other interstate shippers who supported the Section 13 complaint of the Atlantic Coast Line, *et al.*, before the Interstate Commerce Commission were fully conscious of the fact that their producing points were served by railroads having lines extending across the State of Georgia, so that they were able to reach the consuming territory in that state largely over single-line hauls in competition with producers in Georgia who were not similarly situated. The Georgia plants, to a much larger extent, had to make use of joint routes made up of two or more carriers. This fact was well known to the Commission from the evidence before it, when its orders herein were entered. (R. 732-3; Price's Exhibit, 161-B.)

The Commission's order represents a usurpation by the Federal government of the powers of the state, since it imposes on the state rates certain limitations and restrictions to which the state objects and which are not imposed on the interstate rates. The order requires that the state rates shall not be lower, distance considered, than the interstate rates, and in that requirement, says nothing as to the character of the hauls, whether single-line or joint-line. Yet the reading of the report as a whole indicates clearly that the Commission intended that a distinction be made as between single-lines and joint-lines; and as the carriers are complying with the

report, they are charging the full 17517 joint-line scale on joint-line movements in Georgia.*

An illustration of the arbitrary usurpation of the power of the state is afforded by the situation, Sparta versus Montgomery, to Geneva and Graysville versus Chattanooga and Birmingham, to Rockmart and Hiram, Georgia, which we have sufficiently described above.

It may perhaps be further illustrated by the freedom with which the Commission countenances the so-called weak lines in refusing to accept the so-called weak line arbitrary on their interstate rates where they sometimes take it and sometimes reject it. Yet, the state is enjoined to permit the full scale B rates on state traffic. This is illustrated along the Georgia & Florida Railroad.

For instance, from Ellenton, South Carolina, a producing point which is particularly mentioned in the decision, the shortest rail routes to various points in Georgia, such as Helena, Vidalia and Hazelhurst, are all figured via or in connection with the Georgia & Florida Railroad. The rates actually in effect to these stations are the Commission's scale A rates without the additions prescribed for so-called weak lines, of which the Georgia & Florida is one. That road waives this addition and thereby discounts the full scale basis. On the other hand, all of the standard line routes to these destinations are of longer mileage and would make higher rates under the scales than the amounts which have been published. So these are not cases in which a weak line is simply meeting competitive rates via standard routes. This situation is depicted on Chart E, in Appendix 3 to this brief. (See Atlantic Coast Line Exhibit 100-B, R. 624.)

It will be observed that the District Court came very near setting aside the Commission's order as undue in-

*This is covered in some detail in the text following Chart G in Appendix 3 to this brief.

lerference with the right of the state in the regulation of intrastate commerce and only refrained from doing so upon an interpretation of the order, which we would have great difficulty in accepting. This is discussed under proposition III below, pages 52-54.

THE ATTITUDE OF THE GEORGIA COMMISSION.

The record before the Commission clearly shows that the Georgia Commission at no time has taken a course or assumed an attitude in its treatment of the rates on these commodities calculated to reduce the railroad revenues or to accomplish a preferential level or plan of rates within the State of Georgia.

The history of the treatment and consideration of the rates on these materials by the Georgia Commission up to the entry of the Commission's first report in this case will be found stated on pages 140 to 146 of the first opinion. (R. 21-30.) That review is supported by the testimony of record. In brief, as a result of a petition filed by the Georgia railroads, the Georgia Commission undertook in 1917 to revise all intrastate class and commodity rates; and after an interruption due to Federal control, on February 25, 1925, a revision of the sand, gravel, and crushed stone rates was ordered by the Georgia Commission. In this revision, it substantially raised the state rates on which the traffic had largely moved within Georgia and the result was the carriers contemporaneously advanced their low interstate rates. The details of the change accomplished in the state rates as well as in interstate rates are all of record and are illustrated by the tables on pages 143 and 144 of the Commission's original report, Vol. 122 I. C. C. Rep. (R. 25-27.) There were certain unimportant mileage scales of rates which had been in effect in Georgia territory, on which very little traffic moved, but which pro-

voked a discussion as to the effect, on paper, of the Georgia Commission's revision. But the Interstate Commerce Commission said on page 145 of its opinion: (R. 29.)

> "While the Coast Line claims that such Georgia traffic as it originated prior to April 1, 1925, moved to a great extent on the Georgia scales then in effect, yet neither it nor any other carrier presented *any evidence or claim that the Georgia commission scales* of April 1, 1925, *resulted in reducing the carriers' revenue.*"

Further down on the same page, the Commission referred to the testimony of the witness for the Atlanta Freight Bureau, which is abstracted in the narrative testimony in the record (R. 596), indicating that the rates resulting from the scales prescribed by the Georgia Commission represented an annual increase of $114,415 in freight charges as against those under the prior rates, as measured by the traffic for 1925 of Fulton County and the City of Atlanta, which was said to represent about one-third of the total movement.

The Commission further held, quoting from page 146 of the opinion, *our italics:* (R. 30.)

> "Whatever may be said against the present Georgia scales the evidence justifies the conclusion that they served to raise depressed rates which were moving a large part of the traffic both intrastate and interstate to Georgia destinations to a more consistent basis than had existed."

The Commission is here referring to the rates prescribed by the Georgia Commission in April, 1925.

The Georgia Commission in that revision did not attempt to accomplish any favorable rate basis on Georgia state traffic as against interstate traffic. Its order tied the state rates to the interstate rates only to this very proper extent, namely, the Georgia Commission required

that no rate between any points in Georgia should be higher than the current interstate rate, for the same or greater distance, over the same line, the haul between the Georgia points being included in the longer interstate haul. (Page 140 of opinion, Vol. 122 I. C. C.; R. 21.)

The conclusion in the Commission's original report as to the intrastate rates within Georgia is illuminating and will be found on page 169 of the report. (R. 59.) Referring to the changes brought about by the Georgia Commission's aforesaid order of February 25, 1925, in the state rates, and indirectly in the interstate rates, as discussed on previous pages, the Commission said:

> "This order as we have seen resulted in raising many depressed intrastate rates applying between important producing and consuming points, and subsequently had the effect of bringing about substantial increases in important depressed interstate rates."

Following this statement is an express finding by the Commission, although negative in terms:

> "Considering the results brought about by this order it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce."

The Commission then fixed the maximum interstate rates, in its aforesaid report entered January 21, 1927. This report named two scales, to be applied to mileages over so-called *rate-making routes*, to determine the measure of the interstate rates which, in actual practice, are applied over all routes, one, a so-called joint-line, and the other, a so-called single-line scale.

Thereafter the Georgia Commission, holding a hearing and considering all of the facts developed before it, entered its report of March 13, 1928, prescribing a single maximum scale of rates on sand, gravel and crushed

stone to govern strictly as maximum throughout the state. (R. 76.) This scale substantially advanced the rates on sand above the basis which the Georgia Commission had fixed by its order in 1925. It is to be noted that for many years the carriers throughout this territory, both on state and interstate traffic, had charged lower rates on sand than on washed gravel, the value of sand being substantially less. The Interstate Commission's order of January 21, 1927, fixed common scales for all of these materials, sand being elevated to the washed gravel and crushed stone rate basis. The Georgia Commission followed suit in its order of March 13, 1928, raising sand to the washed gravel rates. But instead of adopting the Commission's formula of a higher joint-line scale to be applied to joint-line mileages in determining the rate by the rate-making route, the Georgia Commission adopted the basis which the Interstate Commerce Commission had promulgated in the *Southern Class Rate Case*, and numerous commodity rates cases, namely, of a common scale to govern as maximum any movements, whether joint-line or single-line. In promulgating this scale, the Georgia Commission took the same view as the dissenting Interstate Commerce Commissioners, that the interstate scale for long hauls was too low, and fixed a higher maximum basis for single-line distances over 200 miles, higher than the Interstate Commerce Commission had prescribed.

From this review and from all of the statements in the Commission's decisions, it will be observed that the whole attitude and performance of the Georgia Commission has been to build up and increase rather than to reduce or bear down on the railroad revenues. It has never sought to create or maintain a rate basis favorable to Georgia shippers or receivers of these materials.

II.

The Commission's reports subordinate the question of the rates charged for actual transportation to the question of adherence to a rate formula.

One of the vital infirmities in the Commission's final report and order is that they subordinate the true question of the rates charged by the railroads for the actual services of transportation to the question of adherence to a rate formula. That is to say, the rates in Georgia which did not conform to the Commission's plan for constructing rates were increased, or reduced, by the enforcement of the Commission's final order, regardless of the true comparison between those rates and the services which they cover, on the one hand, and the rates really charged for actual interstate movements, on the other hand.

The interstate rate level, that is to say, the level of the rates actually charged by the carriers for interstate movements of sand, gravel, etc., is substantially lower than the maximum scale prescribed by the Commission as applied to the actual services of transportation.

In order to demonstrate the truth of the foregoing statements, it is necessary briefly to consider the nature of the interstate rate adjustment and the terms of the Commission's original order which prescribed the maximum rates for interstate application:

An analysis of the report and order of January 21, 1927, readily discloses that the Commission only undertook to prescribe the maximum rates for interstate transportation. It did not assume to fix minimum rates nor is the report fairly to be construed as attempting to fix the level of the rates, excepting as maximum.

The head-notes of the original report, (R. 12), the specific language of the findings on pages 165 and 166, (R. 54-5), and the specific language of the order refer only to maximum rates for the future. (R. 74.) The question is whether the report clearly implies that the full maximum rates would be exacted by the defendants, without departures therefrom or discounting thereof, and whether the findings of maximum rates were in such form as to fairly contemplate their use as absolute rates.

THE COMMISSION PRESCRIBED A FORMULA FOR COMPUTING MAXIMUM RATES VIA ALL ROUTES.

Superficially, the Commission's original report in these cases (122 I. C. C.), appears to prescribe a standard distance scale of rates for single-line application and another higher scale of distance rates for joint-line application, both scales being for use as maximum for interstate transportation of sand and gravel to the extent set forth in the findings, namely, from Montgomery and Chattanooga to points in Georgia, and from points in Georgia to points in certain other southeastern states. We say *superficially* it so appears, because on more careful examination of the findings and studying the way they were put in force and the only way that they could have been put in force without violation of their terms, it will be found that the single-line scale and the joint-line scale are not respectively applied to single-line and joint-line movements. They are merely factors used in a process of computation of the maximum rates that are expected to apply over all routes, whether joint-line or single-line, except routes wastefully circuitous. This may be demonstrated very readily by reviewing the terms of the report. It will be confirmed by contrasting this report with the findings in the *Southern Class Rate Case*, the

Southern Cement Case, and other cases, wherein the Commission previously had prescribed a single distance scale of maximum rates to govern all movements and all routes, with no distinction, real or pretended, between the single-line and the joint-line routes and mileages.

On page 165 of the Commission's original report (R. 55), is the finding that the rates from Montgomery and Chattanooga to destinations in Georgia and Mississippi and also to and from Georgia points generally for the interstate transportation of sand, gravel, etc.:

> "are and for the future will be, unreasonable to the extent that they exceed, or may exceed, rates set forth in the following tables, subject to a minimum weight * * *."

Then follows a table of single-line and joint-line rates, expressed in cents per net ton, and described:

> "*Table A.*—Distance scales for interstate application are over standard or trunk lines."

After this table appears a short paragraph, described as *Table B,* providing a basis of rates for transportation over so-called weak or short lines. A mere glance at *Table A* would give the impression that for a single-line haul of say 175 miles, the maximum rate would be, as shown in the table, 130 cents, while for a joint-line haul of that distance, the rate as shown in the table would be 140 cents per net ton. But that is not the fact, and a further reading of the report discloses that it is not the intended result of the Commission's finding.

The report continues with the following formula for the determination of the distances used and of the scale to be applied (P. 166 of the Opinion, R. 55):

> "In determining whether hauls are single-line or joint-line, carriers under common control or management shall be regarded as one line. All of the defendants and respondents are to be classed as standard lines for the purpose of these findings, except those

short lines for which special rate treatment is herein accorded.

In computing distances for the application of the foregoing rates, we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading."

Under the foregoing formula, it will be observed the distance from a particular point of origin to a particular destination is determined by ascertaining the shortest routes, over which carload traffic can be moved without transfer of lading, whether composed of a single-line or of several lines. The appropriate scale under Table A is applied to that mileage; single or joint line as the case may be. The rate thus ascertained is the maximum rate from that point of origin to that destination over all routes by which the materials may be hauled from that point of origin to that destination, and it makes no difference whether they are single-line or joint-line routes.

That is the only way in which we can interpret the formula; and it is the way in which it was translated by the carriers into their interstate tariffs.* The short line distance over a route composed of two or more carriers at the joint-line scale for that distance produces a certain maximum rate which may be lower than the maximum rate produced by applying the single-line scale to the shortest single-line distance between those two points, or the reverse may result. In either case, the lower maximum rate, ascertained by applying the joint-line scale to the shortest joint-line distance or the single-line scale to the shortest single-line distance in actual

*The tariffs themselves, described as J. H. Glenn's I. C. C. Nos. A-655 and A-529, were received in evidence by the court and name the interstate rates, in the form of specific rates from point-to-point. (R. 669-670.) Examination of the tariffs in the light of the statements of the various witnesses of record will confirm our description of them and of the method in which the rates therein were computed. See also our detailed explanation in Appendix 3 to this brief. (R. 669-670, 699, 770, 775-776.)

practice always governs as maximum over all of the routes by which the interstate traffic moves. Not a single instance has been shown of record of departure from this practice, except where extreme circuity exists. (See R. 759, 761.)

THE COMMISSION'S INTERPRETATION OF ITS FORMULA.

In the later report in volume 160, at pages 323-324, (R. 107-8), the Commission discussed our interpretation of its order and held that our contention that its findings and order require the maintenance over all routes between two given points of the rate established via the rate-making route is without merit. We would be only too glad to accept the Commission's interpretation as final, which means that the carriers are freely permitted to maintain over any interstate routes competitive rates to equalize shorter routes *between* the same points. Unfortunately, a very real difficulty arises from the artificial definition in the Commission's orders of what constitutes the *rate-making route*. The Southern Railway, for instance, may have a line of its own from point of origin A to destination B, over which it daily handles traffic in substantial volume. But this line of the Southern Railway from A to B is not *the rate-making route* from A to B, if there is a shorter route from A to B, even though that shorter route may be composed of the Southern Railway for part of the distance and a rival railroad for the balance of the distance, provided only that the Commission's joint-line scale makes a lower figure for that mileage than the single-line scale makes for the individual mileage over the rails of the Southern all the way.

THE RATE-MAKING ROUTES ARE THEORETICAL ROUTES.

Let us take a specific example of the many hundreds that can be cited from the record:

The Seaboard Air Line has its own individual line of railway from Montgomery, Alabama, to Everett, Georgia, over which the distance is 394 miles. Prior to the first decision in 17517, the Seaboard Air Line maintained in its tariffs a rate of 185 cents from Montgomery to Everett. What is the *rate-making route* from Montgomery to Everett and what rate did the Commission prescribe as the maximum reasonable rate from Montgomery to Everett on these materials, when transported by the Seaboard Air Line, over its rails, for 394 miles? The Commission's maximum *single-line* scale rate for that distance is 185 cents. But an examination of the maps and distance tables discloses that the so-called rate-making route as defined by the Commission, *i. e.*, the shortest route by which carload traffic may move, without transfer of lading, is over the Seaboard Air Line as far as Helena, and the Southern Railway from that junction to Everett, 314 miles. (Crane's Ex., 137-B; R. 666.) The Commission's *joint-line* scale rate for this distance is 175 cents. As a result, after the Commission's original order became effective, the Seaboard Air Line charged only 175 cents for transporting these materials over its individual line from Montgomery to Everett, although the maximum scale rate for that distance single-line was 185 cents, the rate which it had formerly charged. The precise language of the findings on pages 165 and 166 of the original report, (R. 54-5) literally and sensibly interpreted is, that 175 cents being the so-called joint-line scale rate, applied to the joint-line distance from Montgomery to Everett, is the

prescribed maximum reasonable rate over all open routes, not unduly circuitous, which will haul the materials from Montgomery to Everett. But if that is not the interpretation of the order, then we are driven to conclude that the Seaboard Air Line was not required to publish 175 cents via its line (and was only privileged to do so), but was ordered to join in 175 cents in connection with the Southern Railway, although this would be a plain violation of the provisions of par. (4), Sec. 15 of the Act, as construed by this court in the *Subiaco Case, United States, et al.*, v. *Missouri Pacific R. R. Co.*, 278 U. S. 269.

For another example, the Southern Railway runs from Birmingham, Alabama, to Shiloh, Georgia, a distance of 249 miles. In compliance with the first order it published a rate of 145 cents between these points, *via* its individual line, although the maximum rate for that distance would be 150 cents under the Commission's scale. It did this because by using the rails of the Central of Georgia for a part of the way, (to Columbus) and the Southern Railway for the balance, the so-called rate making route is formed of 191 miles, for which the joint-line maximum scale is 145 cents. (Crane's Exhibit, 121-D; R. 661.)

Witness Crane for the Southern Railway shows on his Exhibit 130-B, a rate of 210 cents from Mascot, Tennessee, to Mt. Pleasant, Georgia, for a distance of 478 miles over the so-called rate making route, as shown thereon, which is composed of the Southern Railway as the initial and delivering carrier with Seaboard Air Line forming an intermediate carrier in the route. But the Southern Railway has a line of its own all the way from Mascot to Mt. Pleasant and if shipments were received by the Southern Railway at Mascot, Mr. Crane admitted that they would probably move over the rails of his road

through Knoxville, Cleveland, Cohutta, Atlanta and Macon. (R. 673.) The distance by the Southern Railway's own line is 513 miles and the Commission's single-line maximum scale rate for that distance is 215 cents. But the rate under the Commission's decision, published by the Southern Railway from Mascot to Mt. Pleasant is only 210 cents, applicable over all routes. (R. 770.) This is a small difference between the scale rate and the actual rate, but it involves another decidedly peculiar feature of the case: The longest haul within the borders of Georgia is 460 miles. That is the longest distance for which the Georgia Commission has promulgated rates on sand and gravel. The Interstate Commerce Commission prescribes higher joint-line than single-line rates up to 480 miles only; beyond that distance the two scales are merged into one scale.

Mitylene, Alabama, is a local origin point of gravel served only by the Seaboard Air Line. (R. 763.) It is 9 miles east of Montgomery. The Seaboard Air Line has its own rails from Mitylene to Ochillee and Columbus, Georgia, distances respectively of 129 miles and 140 miles. The Commission's single-line scale for these distances makes 120 cents. But the *rate-making route*, using the Commission's definition, is a joint-line route composed of the Seaboard Air Line to Hurtsboro, Central of Georgia beyond. The distances over this route are 82 miles to Columbus and 93 miles to Ochillee; and the Commission's maximum scale for these distances is 115 cents. Consequently, the Seaboard Air Line is maintaining only 115 cents from Mitylene to Ochillee. That is, it discounts the scale from a non-competitive point of origin to a non-competitive point of destination on its own rails simply because of the aforesaid so-called *rate-making route* and the rate produced by applying the Commission's scale thereto.

The Atlantic Coast Line serves Columbia, South Carolina, and over its own rails can reach Pelham, Georgia, by a route of 470 miles. The Commission's single-line scale for this distance is 205 cents. By using the Atlantic Coast Line rails only part of the distance, however, a four-line route is available of 359 miles, made up of the Southern Railway, Georgia Railroad, Central of Georgia and Atlantic Coast Line. The Commission's maximum joint-line scale rate for this distance is 180 cents. The Atlantic Coast Line therefore has published 180 cents over its own rails from Columbia to Pelham. (Exhibit 100-B, witness Doss, page 19.)

We have cited five illustrations using five different interstate origin points and five different single-line railroads, all taken from exhibits filed by witnesses who were proponents of the Commission's final order. Each of these cases involves the maintenance by a single-line of railroad of a rate substantially lower than the Commission's scale would make as applied to the actual distance of transportation.

It will be observed that none of these cases involves the meeting by a carrier of a competing rate established over routes of other carriers. They are all cases where the Commission's definition of the rate making route has resulted in the single line of an individual carrier charging rates substantially lower than the Commission's scale as applied to the distance of haul over its line, simply because a lower rate is made by a joint-line route in which the same carrier would participate if it did not submit to short-hauling itself in contravention of the rule in the *Subiaco Case, supra.*

Instances Where Carriers Freely Discount Interstate Scales to Meet Competition.

The record is full of illustrations of cases where a single-line of railroad or two or more lines of railroad forming a joint route are maintaining from point of origin to destination the same rate as established by another carrier or another set of carriers between the same points. In such cases, of course, the rate charged by the longer route is substantially lower than the Commission's scale would make as applied to the actual distance of transportation. Instances of this kind are pictured in charts C and D, in Appendix 3 to this brief.

On the other hand, there are ever so many instances of record, where single-line railroad routes may be said to control the rates which are in effect over longer joint-line routes. For example:

The Southern Railway is not the rate making route from Chattanooga to Atlanta, under the Commission's first formula, the lowest rate between those points making via the rival line of the Nashville, Chattanooga & St. Louis. But to Gainesville, Georgia, a point 53 miles east of Atlanta, on the Southern Railway and served also by the Gainesville Midland, the Southern Railway is the rate making line, distance 201 miles. The joint-line route composed of the Nashville, Chattanooga & St. Louis Railway to Atlanta and thence the Seaboard Air Line to Winder, and the Gainesville Midland Railroad beyond, a total distance of 215 miles, takes the rate named by the Commission's formula on the Southern Railway mileage. If the Southern Railway is not the rate making line from Chattanooga to Atlanta, but yields that honor to its rival the Nashville, Chattanooga & St. Louis, and if joint-line scales ought to be maintained

higher than single-line scales, then why should the Nashville, Chattanooga & St. Louis and its connections be required to use the single-line scale of the Southern Railway for making their rate to Gainesville, the destination beyond Atlanta? Or, if the Southern Railway is meeting the competition of the Nashville, Chattanooga & St. Louis at Atlanta, shall it be said that the Nashville, Chattanooga & St. Louis via Atlanta is meeting the competition of the Southern Railway to the point beyond and to which Atlanta is intermediate over all routes?

The Interstate Rate Structure is Builded on Fictitious Routes.

We rather think the true characterization of the Commission's original basis is that it is not a plan wherein rates are made over routes that are truly rate making routes, in the practical legal sense of that term and other routes are permitted to meet the competition of the rate making lines. In truth the interstate system is one in which the rate making routes are fictitious routes or artificial routes, namely, the shortest routes by which carload traffic could move without interchange of loading, regardless of whether the traffic moves that way or whether it could be required so to route it under the limitations in Section 15 of the Act and their constitutional rights and that all routes which participate in the transportation are expected to and in fact do make the same rates as are maintained over the so-called rate making groups. There are, of course, innumerable instances of rates made to reflect true carrier competition: One is afforded by the situation from Birmingham to Atlanta, as revealed in sketch C in Appendix 3. Here the Seaboard Air Line has a single-line route of 166 miles for which the scale distance is 130. The Central of Georgia

moves traffic from Birmingham through Opelika in connection with the West Point route to Atlanta, a total distance of 232 miles. The carriers over this route are charging 130 cents to Atlanta because that is the rate via the Seaboard Air Line. It represents, however, a charge, for purely competitive reasons, and at the pleasure of the carriers, of substantially less for the interstate movement than the Commission's scale would make as applied to the distance of actual transportation.

III.

While the Commission's order ostensibly prescribes a minimum and a maximum basis for intrastate rates in Georgia, this minimum basis is vague, indefinite and uncertain.

In its preliminary opinion dated March 3, 1930, in respect of the denial of the interlocutory injunction, the District Court construed the Commission's order of December 9, 1929, as prescribing a minimum basis of rates for intrastate transportation in Georgia, as well as a maximum basis. (R. 165; p. 170 of 39 Fed. (2d).)

Reading the face of the Commission's opinion, it seems that a minimum basis was prescribed, but when we examine the opinion in the light of the evidence before the Commission, it is impossible to know definitely and with certainty what were the intended minimum rates. This becomes doubly difficult to determine when we consider whether the tariffs actually filed by the carriers to comply with that report properly provide only the minimum basis contemplated by the Commission or really name the full measure of the maximum rates prescribed.

The minimum prescribed for state traffic is thus described in the language of the final order (R. 116), "Rates which shall not be lower, distance considered,

than those contemporaneously applicable to the transportation of interstate traffic." What does that mean and what was it intended to mean?

For distances, over so-called rate-making routes, of 200 miles, in interstate commerce, the Commission had prescribed as maximum 135 cents single line and 145 cents joint line; and these amounts the final order named as maximum also for intrastate traffic. But for that distance the interstate rates actually charged by the defendants, as they participate in the transportation, are shown of record to be varying amounts, 120 cents, 130 cents, 135 cents, etc. Which of these rates is intended to govern as minimum against the intrastate transportation?

Also, in using the phrases "contemporaneously applicable" and "contemporaneously maintained" does the Commission mean as the interstate rate may be changed from time to time in the future or the rates as they were "now" in force on the date of the order?

Also, is the phrase, "distance considered" as used in the order, complete in itself, or is it to be implied and written into the order to mean "distances of joint-hauls" and "distances of single-line" hauls. Without the latter additions, the order would have brought about practically no changes in the existing rates in Georgia.

Appellants Petitioned the Commission for an Interpretation of the Order.

The appellants raised the foregoing questions, by a very definite and respectful inquiry of the Commission in a formal petition which was promptly filed by the Georgia Commission before the Commission's order took effect. This petition is dated January 10, 1930, and ap-

pears in full in the printed record. (R. 118.) The petition also assigned various particular errors against the Commission's report and order. It was perfunctorily and summarily denied by the Commission in an order entered February 3, 1930. (R. 7, 249.) The carriers proceeded to publish the rates in tariffs which were filed with the Commission at Washington and with the Georgia Commission, the latter rejecting the schedules as contrary to the state law. (R. 7.)

In Appendix 2 to this brief, we are reproducing for convenience several specific examples which were brought to the attention of the Commission involving various phases of the difficulty of determining what basis the Commission intended to prescribe as minimum for interstate movements within Georgia.

In presenting that petition, the appellants stated their presumption that the Commission's order of December 9, 1929, was intended to require the railroads to establish and charge on intrastate movements in Georgia: (a) rates which are no lower, distance considered, than the rates which the respondents contemporaneously applied to interstate transportation; and (b) rates no higher than set forth in the appendix to the report. Under such a broad interpretation of the order, however, the appellants expressed the view that the Commission's order was indefinite, uncertain and invalid and should be made clear by amendment or additions. We called particular attention to two features, *first*, the uncertainty as to the rates which the respondents apply to interstate transporation; and *second*, the uncertainty as to the rates set forth in the appendix to the report. The latter feature relates only to the proper interpretation of the maximum basis prescribed for interstate and also intrastate application, and therefore can be passed by in this portion

of our argument, for discussion only of the first feature, as to which we said:

As to the rates which the respondents apply to interstate transportation: The respondents, severally and collectively, apply to the interstate transportation of these materials in Georgia territory, varying rates for the same distances and they do not now adhere to any scale of rates for the distances transported over the actual routes of movement. As to which of these varying rates contemporaneously applied by respondents to the actual interstate transportation are to be accepted and used as the measure to which the state rates for comparable distances must conform is not stated in the report or definitely ascertainable. Is it then really intended that the respondents shall establish, on intrastate movements in Georgia, rates which are no lower, distance considered, than the *maximum* scale of rates which govern the shortest physical routes that might be used (and in some cases are used for some of the traffic), in interstate movement? That is to say, shall the interstate rates which have been prescribed as *maximum* for the shortest interstate routes but are actually applied over the longer interstate routes, be imposed as *minimum* rates in Georgia? If so, the Georgia Commission would be enjoined from requiring certain respondents to charge for certain distances in Georgia, rates of the same measure which the Commission permits them to continue charging on interstate traffic for the same actual distances.

The illustrations which were called to the Commission's attention in the petition for rehearing (see Appendix 3 hereto), involved, among other things, the inquiry whether if one respondent charges a certain rate for a certain distance for interstate transportation, the

order of December 9, 1929, then contemplates that other respondents shall maintain a corresponding rate for the same distances on their intrastate movements in Georgia? Or does the order contemplate that each respondent railroad is simply required to maintain for intrastate movements the same rate which it maintains or participates in for a corresponding interstate movement? Either answer to these questions presents great difficulties because the same carrier often participates in two or three different rates of different amounts for the same distance between different interstate points. But if each respondent is simply expected to maintain as minimum, the rate which it charges on an interstate movement of corresponding distance, regardless of what other railroads may be charging, we have the further difficulty that for many movements within Georgia the particular railroad is not and could not possibly be a participant in an interstate haul of equal length. For example, the Macon, Dublin & Savannah Railroad or the Gainesville & Northwestern participate in intrastate movements of 50 or 60 miles. They could not possibly participate in an interstate movement of that distance.

THE DISTRICT COURT'S INTERPRETATION OF THE ORDER.

We have referred to the difficulty over the meaning of the phrases "contemporaneously applicable" and "contemporaneously maintained," as used by the Commission in its prescription of the minimum basis for state traffic.

The District Court in its original opinion (page 170 of 39 Fed. (2d); R. 165), construed the word "contemporaneously" not to have what we regard as its ordinary future meaning, and two of the judges thought that it

did not refer to "the rates that may at any time in the future be applicable." The District Court said that in its opinion, the order, if it meant to fix the state rates on the minimum basis that may at any time in the future be applicable:

> "'would be unlawful, because, should in the future any of the interstate rates be altered, either by the railroads or by the Commission itself on the usual proceedings only, a change in the existing state rates would *ipso facto* result. Thus for all time in the future, until this order should be revoked, the Interstate Commerce Commission would have absorbed to itself the complete control of intrastate rates on these commodities, altering them by altering the interstate rates without the hearing as to then conditions which is required by Section 13 (4)."

The court below discussed the fundamental error of any such order by the Commission, so interpreted, and went on to say:

> "If this could be done as to these rates, it could be done for all rates in all the states. The complete control of intrastate rates could be reached by one general hearing in which it was determined that all State rates which differed from interstate rates were discriminatory and to be conformed to contemporaneous interstate rates, with future changes only such as the carriers or the Interstate Commerce Commission might make. This would have much in the way of simplicity and uniformity to commend it, but as the Constitution, which gives the federal government the right to regulate interstate commerce, has reserved the general control of intrastate commerce to the states, we think this result could be achieved only by altering the Constitution. Certainly the powers of the Commission under Section 13 (4) were not intended to be so stretched. The section contemplates investigation of particular situations under conditions then existing, with a full formal hearing, and authorizes interference with state rates only when there is disclosed a present, real, and substantial discrimination against, or other specific

> detriment to, interstate commerce. *Florida* v. *United States* (D. C.), 30 F. (2d) 116, 117. An order like the present one, applying to but one rate, would be as vicious in principle, and unlawful for the same reasons, as the most extreme one that has been supposed would be."

In other words, the District Court in substance holds that the Commission's order would be invalid, on the ground of invading the rights of the state in the regulation of commerce within its borders, if the minimum rate requirement in that order is addressed to a comparison with the contemporaneous interstate rates, in the continuing, future sense of that word. One member of the court, Judge Sibley, would so construe the term, but yields to the view of the other two judges for the purpose of sustaining the validity of the order.

On the other hand, if the report is to be construed in respect of the meaning of the term "contemporaneously," as the majority of the court felt it should be construed, thus establishing the validity of the order, it will be observed that the order simply required the defendants, on traffic within the State of Georgia, to charge rates no lower than they were at that time charging for the same distances on interstate movements, *i. e.*, as of the date of the order. This freezes the rates in Georgia, on the basis supposedly charged by defendants on interstate traffic as of December 9, 1929, although the railroads were granted expressly by the Commission *carte blanche* authority to reduce any interstate rate over any interstate route below the measure of the scale where another route between the same point of origin and destination maintained a lower rate—accepting for purposes of this statement the Commission's own interpretation of the terms of its orders.

We have no objection to the construction placed on the

order by the District Court, in relation to the meaning of the words "contemporaneously maintained," although we feel there is no warrant for that interpretation either in any decisions construing the term or in the practice of the carriers themselves.

Meaning of the Term "Contemporaneously Applicable."

There are only two reported cases which we have found under the administration of the Interstate Commerce Act dealing with the construction of the word "contemporaneous." This word does not appear in Sections 3 or 13 of the Act, dealing with unjust preference and undue prejudice, either among interstate rates or between interstate and intrastate rates; but it does appear in Section 2 of the Act, which prohibits one person receiving a transportation service for a less charge than another person pays, for "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." In construing this section of the Act, in a report entitled *In the Matter of Restricted Rates*, 20 I. C. C. 426, at page 434, the Commission adopted the view expressed by McPherson, District Judge, in the Circuit Court for the Eastern District of Pennsylvania, in *Mitchell Coal & Coke Co.* v. *Pennsylvania R. R. Co.*, 181 Fed. 403. That is to say, the court and the Commission held, that the words "contemporaneous service," as used in Section 2 of the Act, cover the time during which the discriminatory rates or practices remain in force. The Commission quoted from the court's opinion on this point, as follows:

> "In my opinion the well-known evil aimed at in section 2 requires the court to hold that the implied

> term in the comparison is the offending rates, making the word to mean, 'at the same time with the offending rates,' and that, as long as these rates remain in force, the services rendered to a complaining and to a favored shipper are 'contemporaneous' within the meaning of the statute."

These expressions seem to give the word "contemporaneous" the usual meaning reflected in the dictionary:

> "*Contemporaneous:* living, existing, or occurring at the same time; contemporary."

The Commission's orders are continuing orders, governing the future,

We believe counsel for the defendants and for the carriers will agree with us, that the Commission generally if not invariably uses in its orders the phrase "contemporaneously maintained" or "contemporaneously applicable" in their future sense, meaning to reflect the changes that may occur from time to time, and not relating to the rates current on the date of the order. These words are uniformly used by the Commission in its so-called alternative orders, relating to cases of unjust discrimination among purely interstate rates, and thereby permit the carriers to remedy the discrimination by reducing the prejudicial rate or by increasing the preferential rate, or partly in one and partly the other way, without reference to what were the rates in force on the date of the Commission's order.

In raising the question of the vagueness and uncertainty of the *minimum* requirement of the order, we ask the court to notice from the exhibits of record that we are not dealing merely with occasional instances in which the carriers, for competitive reasons, have established less than the scale rates for their interstate hauls. The record shows that *in countless cases* on interstate traffic, every carrier is charging for the transportation it

performs rates which are on the scale basis as applied to some other route of movement—competitive or merely potential. The scale rates are not applied to the actual interstate transportation. In an order based alone on distance, using the words "distance considered" and the further definition "according as they participate in the transportation" it seems impossible to determine with any degree of certainty whether the rate of 120 maintained from a certain point to a certain destination by the Southern Railway, or a rate of 130 maintained elsewhere by the Atlantic Coast Line, or a rate of 140 maintained somewhere else by the Central of Georgia, all for interstate hauls of the same distance, is to constitute *the minimum*, below which the state rate of the Georgia Railroad for that same distance in the state shall not be maintained.

IV.

The Commission's reports and orders are void because there are no findings of undue disparity between the rates charged for Intrastate transportation in Georgia, and the rates actually in force for Interstate transportation.

The Commission's power under paragraph (1) of section 15, and under paragraph (4) of section 13 of the Act, to enter an order prescribing rates for the future, either as minimum or as maximum, depends on a finding that the present rates are in violation of one of the substantive provisions of the law. If the rates presently charged by a carrier or carriers are in no respect unlawful, or are not expressly found by the Commission to be excessive, discriminatory, prejudicial or otherwise illegal, the Commission has no jurisdictional basis for requiring other rates to be charged in the future, either as maximum or as minimum.

The Commission's power to enter an order prescribing rates for the future, either as minimum or as maximum, may be exercised only upon a finding that the present rates are in violation of one or more of the substantive provisions of the Act.

Par. (4) of Sec. 13 of the Act.

(Par. (1) of Sec. 15 of the Act.

Interstate Commerce Commission v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 57 L. Ed. 431.

We may properly inquire, therefore, as to what findings are contained in the report as to violations of the law with respect to the rates which the Commission requires shall be charged for the future. It will be discovered the findings herein are not definite and specific, but general and indefinite. We shall later discuss the fact that the findings are not supported by the requisite evidence in the record.

THE FINDINGS OF THE COMMISSION ARE VERY GENERAL.

On page 325, of the Commission's report of December 9, 1929 (R. 110), is repeated the following finding which had been made in the original report:

> "there is no transportation reason for the maintenance of a basis of intrastate rates on these commodities within Georgia different from that there found reasonable for interstate transportation."

We seriously question, but will not now stop to discuss, whether a general conclusion of this nature is of any real weight or significance under the provisions of paragraph (4) of section 13, as considered by the Supreme Court in the *Wisconsin Passenger Fares case*, 257 U. S. 563. Certainly Congress could have made just such a provision in section 13, condemning *any basis* of intra-

state rates different from those found reasonable on interstate commerce, yet it did not do so. Bases of rates may be different and yet there may be no unjust discrimination in the rates themselves. Passing that question, we come to the next general finding on the same page of the Commission's final decision (R. 110):

> "that the circumstances and conditions affecting intrastate transportation within Georgia and interstate transportation * * * are substantially similar."

This too is a very general finding. The Georgia Commission has never contended, and does not now contend that the conditions are any different, *in general and on the average*, as between intrastate transportation of commodities and their transportation when crossing state lines into, out of or across the State of Georgia. But freight rates can not be dealt with in mere generalities. We do contend that for specific movements there are very substantial differences in the transportation conditions, frequently warranting different rates for hauls of the same mileages, and the evidence sustains this contention. Some elasticity is therefore necessary in the rate structure and is provided when only *maximum* scales are prescribed. The Commission's two decisions will be searched in vain for any specific findings respecting transportation conditions.

The third finding of the last decision, also on page 325 of the report, (R. 110), is—our *italics* and omitting unimportant language:

> "that respondents' rates applicable to the intrastate transportation of sand, gravel * * * between points in Georgia, *to the extent that they are lower, distance considered*, than the interstate rates contemporaneously applicable to the transportation of the same commodities * * * not exceeding the rates set forth in the appendix to this report and hereto-

> fore found and prescribed as reasonable for the interstate transportation of said commodities, * * * according as said respondents participate in said intrastate and said interstate transportation, *result and will result in undue preference* and advantage of shippers and receivers of freight in intrastate commerce within the said State of Georgia and in undue prejudice to shippers and receivers of freight in interstate commerce * * * and in unjust discrimination against interstate commerce."

The foregoing finding is unquestionably broad and comprehensive, yet it is very general and indefinite. It does not specify what intrastate rates are found preferential and only refers very broadly to such rates as are "lower, distance considered", than the interstate rates. There is hardly a rate in Georgia that is lower than some interstate rate maintained for the same distance and the record so shows.

The foregoing are the only findings directed against the rates as then in existence. They are so broad that they really add nothing to the language of the statute itself, which provides in substance in Section 13 that intrastate rates shall not be lower than interstate rates; and, of course, the statute implies, "distance considered," and implies all other factors shall be taken into consideration. The foregoing findings fall far short of complying with the doctrines applied by this court in the recent decision in the *Florida Log Case, supra,* that the mere existence of a disparity in rates between state and interstate traffic is not enough; that the justification for the exercise of the Federal power must clearly appear; and that the Commission must make definite and certain findings against the state rates to justify an affirmative order under par. (4) of Sec. 13.

We come now to the Commission's findings dealing with the rates for the future:

As a remedy for the aforesaid indefinite violations of law, ostensibly found by the Commission, the report then proceeds to prescribe a future basis of rates in this finding:

> "that said undue preference and undue prejudice and unjust discrimination can and should be removed by the establishment, maintenance and application to intrastate traffic between points in the State of Georgia of rates which shall not be lower, distance considered, than those contemporaneously applicable to the transportation of interstate traffic between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in Georgia, not exceeding the rates set forth in the appendix to this report and heretofore found reasonable in these proceedings for said interstate transportation."

The foregoing are the general findings of the report and they are the only findings of undue preference and advantage to state shippers and state commerce, and unjust discrimination against interstate commerce, requiring certain minimum and maximum bases of rates for the future on intrastate traffic. In respect to them, we ask the court to notice, (a) that a very great many of the state rates in Georgia were on the same basis as the interstate rates, that is to say, they were the full amount of the Commission's scales as applied to the actual distance of the transportation over the shortest route actually hauling traffic, and (b) that a great many other rates in Georgia were actually higher than the prescribed interstate maximum scales. (c) We concede that many of the Georgia rates for joint line hauls were lower than the maximum measure of the interstate scales would produce; but that is true of many interstate rates.

Distance Is the only Element Mentioned in the Findings.

The court will particularly note the words in the Commission's findings, "distance considered." The findings require intrastate rates no lower, *distance considered,* than those contemporaneously applicable on interstate traffic. Distance is the only test mentioned for determining whether the state rates were lower. Nothing is said in these findings about the character of the routes or the nature of the hauls. We assume these findings should be strictly construed and obviously they were very carefully drawn. They only require definitely that for a movement of a given distance within the State of Georgia, the rate shall be no lower than contemporaneously charged on interstate traffic for the same distance. They do not specify that a two or three line route in Georgia shall be subject to the same rates as a joint-line interstate route of the same distance.

If, therefore, the rate for a particular two line movement of 175 miles in Georgia was $1.30, (being the amount of the Georgia Commission maximum scale for that distance), it was not lower than the rate charged for *interstate* shipments moving 175 miles, when single line hauls, and therefore did not violate the letter of the foregoing findings, although it is true the Commission's intrastate *joint-line* scale for that distance made a rate of $1.40. The findings say nothing as to joint-line and single-line hauls, and refer only to distance.

We concede that other portions of the report and particularly the scales set forth in the Appendix and which are prescribed only as maximum, both as to interstate and as to state transportation, purport to make a distinction and rate difference between single-lines and joint-lines, in the application of the formula to rate-mak-

ing routes. But the basic findings of the report, as set forth above, and the prescription of a *minimum basis* on state traffic are limited to refer only to the distances involved, not the character of the routes or hauls.

The court will further observe that the foregoing general findings make no allowance for the specific transportation conditions affecting the particular hauls. The Commission's decisions, through more than 150 volumes of its reported cases, consistently and repeatedly hold that distance is not the only factor and indeed is not the controlling factor in rate making. We shall hereafter discuss these decisions.

For example, it must be conceded that where transportation is over a main line with heavy traffic density, low grades, with long trains of loaded cars and many trains per day of traffic in general and of a specific commodity in particular, the rates charged and the maximum rates that would be reasonable are much lower than somewhere else where for the same distance an occasional car of that commodity may move, over a branch line of light density, heavy grades, few cars behind the engine, etc. These circumstances may not be of controlling importance where the Commission is called upon only to fix a maximum rate which will be reasonably sufficient normally to control average movements through a particular territory. But they are of very great importance where it is proposed to fix a *minimum* rate as well as the maximum.

We respectfully submit that a decision which bases a finding of unjust discrimination on distance, as a sole controlling factor, is arbitrary and should be set aside, in the light of the repeated holdings of the Commission itself that similarity of conditions and circumstances of transportation depends on many factors other than mere distance.

DISTANCE IS NOT THE SOLE CONTROLLING FACTOR IN RATES.

The transportation law is well settled, under the repeated and unvarying decisions of the Commission itself, that the distance hauled is only one factor and by no means the controlling factor in determining the reasonableness of rates and the propriety of rate relationships or the existence of unjust discriminations. We shall quote three or four illustrative decisions:

In one of its earlier decisions, *Wilhoit* v. *Missouri, Kansas & Texas Railway Co.*, 12 I. C. C. 138, at 140, the Commission said:

> "Distance is something of a factor in the determination of the reasonableness or unreasonableness of a rate; but to permit it to be a sole or controlling factor would be to introduce discrimination, which would create chaotic commercial conditions under which irreparable injury would be done to individuals, firms, and communities without any compensating good resulting to the people or the commerce of the country as a whole."

In *Corporation Commission of North Carolina* v. *N. & W. Ry. Co.*, 19 I. C. C. 303, at page 309, the Commission stated (our ital.):

> "It is well settled that distance is always a factor to be taken into consideration in determining either the reasonableness of a rate by itself or *in considering its relation to rates to other points;* but *it is equally well settled that distance alone is not controlling.* Competition is an important element, and there are various other considerations, all of which must be taken into account in determining the fact whether a particular rate or a system of rates is or is not reasonable. Shippers and receivers of freight are entitled as a matter of law to rates that are reasonable, and that do not operate to unduly discriminate against them."

Again, in *Fort Dodge Commercial Club* v. *I. C. R. R. Co.*, 16 I. C. C. 572, at pages 581 and 582, the Commission said (our ital.):

> "Unquestionably mileage is a factor in the determination of the reasonableness of rates, but how important, or what effect it should have in judging the fairness of a challenged rate is a question which must be answered in the light of all the facts surrounding the exaction of the rate. Early after its organization the Commission held that *it was not the purpose of the act to compel the establishment of rates solely according to mileage*, and that the public benefits, the greater volume of business to carriers warranting lower rates to all, the force of competition, and many other potent considerations might far outweigh a claim of right founded only on geographic location. *Imperial Coal Co.* v. *P. & L. E. R. R. Co.*, 2 I. C. C. Rep. 618."

And in *Corporation Commission of Virginia* v. *C. & O. Ry. Co.*, 40 I. C. C. 24, at page 29 of the report the Commission stated:

> "The element of distance is an important matter to be considered in determining the reasonableness of rates in their relation to other rates with which they are compared, but distance alone is not controlling, and in many cases must yield to other and more weighty circumstances and conditions. *Corporation Commission, North Carolina*, v. *N. & W. Ry. Co.*, 19 I. C. C. 303, 308-309."

In the light of these and other like expressions by the Commission, surely a sweeping decision intended to overturn all rates throughout a state solely where lower *by a distance comparison*, is arbitrary and should be set aside.

The court will observe also in the foregoing findings that the respondent carriers are ostensibly authorized to establish as minimum on intrastate traffic in Georgia, rates no lower than those which the carriers may have voluntarily published on interstate traffic, notwithstand-

ing orders of the Georgia Commission to the contrary. In other words, the Commission in effect says that the action of the state regulatory body is entitled to less weight and to less respect than the action of the carriers, since the state-prescribed rates are set aside to the extent that they may be lower than the rates the carriers have chosen to establish for interstate application.

We have been discussing principally the general findings which constitute the Commission's formal statement of the conclusions reached in the last decision, in accordance with par. (1) of Sec. 14, and par. (4) of Sec. 13 of the Act. Of course, the remainder of the Commission's report is also of significance on these matters.

COMMISSION'S ILLUSTRATION OF ALLEGED DISCRIMINATION.

We are not overlooking the illustrations contained in the Commission's final report, principally those to be found in a table on page 316 thereof, (160 I. C. C.; R. 97-99). This table shows rates to seventeen destinations in Georgia, from various interstate points of origin and from intrastate origin points in Georgia with the short-line distance* governing each haul, the rates that are in effect and their relationship to the Commission's scales. The interstate rates are seen in each case to be on the full basis of the Commission's scales, with one exception, while all of the Georgia rates shown are less than the Commission scale by amounts from 5 to 25 cents per ton, save one which is 5 cents higher than the scale. This is not truly a comparison of interstate rates against

*In this table and in practically every one of the very numerous and extensive exhibits filed of record by the railroads and the complainants before the Commission, the distances shown are not by the short-line routes of actual movement, but are over fictitious routes or theoretical routes, namely, the shortest routes that can be formed by joining existing rails (regardless of ownership and operation), and over which carload traffic could be moved without transfer of lading.

state rates, but is rather a comparison of both state and interstate rates against a common yardstick afforded by the Commission's scales *and formula.* When we study the table in the light of all of the evidence of record, quite a different conclusion may be drawn from it than that it establishes an unjust discrimination between state charges and interstate charges.

Take the first illustration in the table which deals with the rate from Ellenton, South Carolina, to Cordele, Georgia, shown as 171 miles, and which is subject to the full Commission's scale basis of 140 cents. Against this, the report shows that from Holton, Georgia, to Cornelia, Georgia, a short-line distance of 157 miles, the rate is only 120 cents, or 10 cents less than the full Commission's scale.

Ellenton, Georgia, is a local station on the Charleston & Western Carolina Railroad, just north of the Savannah River, and about 23 miles east of Augusta. Cornelia, Georgia, is a local station on the Southern Railway about 77 miles northeast of Atlanta, on the main line coming down from Charlotte and Greenville, South Carolina.

There are numerous routes over which crushed stone produced at Ellenton may move to Cornelia, although there is not a word of evidence in the record to show there actually was a movement, or by what routes the carriers would transport the material if shipped. The shortest route that can be found is 173 miles, via Seaboard-Southern Railway; (Exhibit 100-B, p. 3); but the 140-cent rate applies over many other routes of substantially greater mileage, for which the Commission's maximum joint-line scale would make more than 140 cents.*

*Among these routes are Charleston & Western Carolina in connection with Blue Ridge and Southern Railway, 186 miles; Charleston & Western Carolina in connection with Georgia Railroad and Southern Railway, 189 miles; and Charleston & Western Carolina in connection with Georgia Railroad, Georgia Midland and Southern Railway, 218 miles.

On the other hand, from Holton, Georgia, to Cornelia, is a one-line haul over the Southern Railway, Holton being a producing point of gravel just north of Macon, on the Southern Railway line to Atlanta. It is true the single-line rate for this distance is 10 cents less than the full amount of the Commission's maximum scale for 157 miles, the short single-line distance. (Exhibit 100-B.) But there are plenty of cases where the various carriers on interstate transportation charge less than the full scale rate for 157 miles. For example, the Southern Railway distance from Chattanooga to Atlanta is 153 miles over the Southern Railway, which falls in the same rate-block as a haul of 157 miles, and although the Commission's scale rate for that distance is 130 cents, the Southern Railway only charges 120 cents, because it happens that the Nashville, Chattanooga & St. Louis Railway has a route of only 137 miles between Chattanooga and Atlanta, and the scale applied to that distance makes 120 cents. (R. 770.) Yet, if the Southern Railway is permitted to charge only 120 cents for an interstate haul from Chattanooga to Atlanta, what vice is there in its continuing to charge 120 cents for a corresponding distance from Holton, Georgia, to Cornelia, over its single-line route? And if joint-line routes are more expensive than single-line routes, as claimed by defendants, how does the existence of this single-line rate from Holton to Cornelia, intrastate, establish an unjust discrimination against the joint-line interstate rate of 140 cents from Ellenton to Cornelia?

The Commission's table next compares the 110 cent rate for the single-line haul of 118 miles from Pacolet, South Carolina, to Cornelia, which is on the scale, with the 110 cent intrastate rate from Norris, Georgia, to

Cornelia, which is shown in the table as 25 cents below the Commission's scale. The court will notice that we have here two hauls of almost exactly the same distance, one an interstate single-line, and the other a state joint-line, and the two take the same rate. That is not necessarily an unjust discrimination. It is true that from Norris, Georgia, to Cornelia, Georgia, is a two-line haul for Norris is on the Georgia Railroad, 72 miles northeast of Macon. The Commission's full joint-line scale, if applicable, would make 135 cents for the 127 miles from Norris to Cornelia, yet the rate actually in effect was 110 cents. (Exhibit 100-B.) There is not a word of testimony of record tending to show that transportation from Norris to Cornelia is any more expensive than from Pacolet to Cornelia, equal distances.

We can continue with the analysis of the table on page 316 of the report but feel that the examples already cited therefrom will suffice.

We, therefore, repeat that the differences and disparities reflected in the evidence and in the report are only with reference to the formulas and bases used in computing the rates and not with respect to the measure of the actual rates charged for the actual service.

The Evidence on Which the Commission's Findings Ostensibly Are Used.

The oral evidence and rate exhibits, while voluminous, deal for the most part with only one phase of the situation: The rates which were in effect and which would be in effect, applying the various formulas to the distances between points of origin and destination, arrived

at on the arbitrary or artificial plan of taking assumed routes made up of the shortest rails over which carload traffic could be moved without transfer of the lading and not the real distance of the actual transportation.

The court will notice that this method of computing distances and of arriving at the routes to be used for determining the rates, was adopted by the Commission in the so-called *Southern Class Rate case*, 100 I. C. C. 513. This was a very important proceeding in which the Commission's decision was very carefully considered and it has met with general approval. But in that decision, after adopting as rate-making routes, the shortest lines over which traffic could move without interchange of lading, the Commission proceeded definitely to reject the plan of two scales, one for single-line and the higher for joint-line application, pointing out that it was impracticable to do so, and promulgated one scale of class rates for all hauls of all kinds. This is what the Georgia Commission did in its sand and gravel case. We shall later discuss the question further.

The exhibits of record show a great many state rates in Georgia which were the same as the interstate maximum scales applied to the full actual distance over routes of movement. The evidence also shows a great many *interstate* rates, less than the full measure of the interstate maximum scales as applied to the actual lengths of the haul. In other words the evidence shows this condition: The interstate rates were arrived at by taking certain so-called single-line scales and so-called joint line scales, applying them to the so-called rate-making routes and then all routes participating in the transportation, whether single line or joint line, adopted this same rate.

It is true the evidence further shows that many of the

state rates for joint-line hauls were less than would have been produced by using the interstate formula *and adhering to the full maximum of the scales.* Yet it does not follow from this fact that these intrastate rates were *lower, distance considered, than the actual interstate rates,* if we are comparing the state rates and the service actually covered thereby, on the one hand with the interstate rates and the service actually covered thereby over the real routes of movement, on the other hand.

We assert the evidence, although voluminous, really fails to show anything more than this condition of discrepancy in formula rather than real disparity in rates. In support of this assertion we ask the court to notice the illustrations used in the Commission's opinions, of situations which purport to reflect a disparity between state rates and interstate rates. When analyzed, they will be found only to reflect the differences in formula and in the underlying mileage principles upon which the reports purport to rest.

Counsel for the Government, or for the carriers, will doubtless assert that our view of the evidence is quite too narrow and that we are misconstruing both the terms and the results of the Commission's orders. Let them offer an example taken from the evidence. It will probably be something like this:

From station A in Alabama to station B in Georgia, short line distance 125 miles over a two or three-line route, the interstate rate actually in effect is 125 cents, which is the full amount of the Commission's so-called joint-line scale for that distance. On the other hand, from station X to station Y, both in the State of Georgia, for a two or three-line haul of 125 miles, the rate in effect was 110 cents (this being the full amount of the Georgia

Commission's maximum scale for this distance), or 15 cents less than the interstate rate just mentioned.

If distance were the only and controlling element in rate making, this by itself might be construed as a disparity in rates. But fortunately it is not the only element, else the Congress or the Commission long since could have enacted a simple requirement for rigid mileage scales governing all transportation and saved a lot of expensive rate litigation. *Moreover,* in reply to any number of illustrations such as this one which the other side may offer, we can respond by a rebuttal showing of other *interstate* joint-line hauls of corresponding distances where the rates are actually ten, fifteen or twenty cents lower than the Commission's maximum scales, its joint-line scales, for the distances over the routes by which the traffic really moves. We have already presented such illustrations in preceding pages of this argument. In our present example, we may add there are many actual cases of interstate movements for 125 miles, joint line, at a rate of 110 cents.

Commission's Adoption of Principle of Higher Rates for Joint-Line Hauls.

The District Court assumed that the Interstate Commerce Commission had prescribed and is enforcing higher bases for joint-line hauls than for single-line hauls on all traffic, interstate and state, and that the Georgia Commission is requiring a common basis, of one scale to govern all hauls, as did the Interstate Commerce Commission in the class rate and in several commodity rate cases in Southern territory (p. 468 of 42 Fed. (2d); R. 171). Presuming that such difference *in actual practice* and performance is now claimed by counsel who are seeking to uphold the Commission's orders herein, we reply

that if the Commission is enforcing the principle in some measure on interstate sand and gravel traffic, of higher rates for joint-line than for single-line hauls, this is an unwarranted departure from the principle and rule which the Commission itself is applying generally to the interstate rates on other commodities.

Referring to the conclusions in the original report, pages 164 and 165 (of 122 I. C. C.; R. 52), we find the Commission stating its conclusion "that in the case of these commodities joint-line arbitraries may reasonably be permitted." In that opinion, in Table A on page 166 (R. 54), and again in the Appendix to the later decision (160 I. C. C. 327; R. 116), are set forth two scales respectively denominated "single line rates" and "joint line rates." This difference in rates prescribed as maximum disappears, however, in an extraordinarily large number of cases when the rates are established by the carriers for actual application to the moving traffic. For in real practice under the Commission's orders, wherever there are two or more routes, actual or *potential*,* between a point of origin and an interstate destination, all of the routes carry the same rate, except where extreme circuity exists. This rate is either the so-called joint-line scale applied to the shortest joint-line mileage or the single-line scale applied to the shortest single-line mileage, whichever makes lower; and all of the routes, whether single-line or joint-line, adopt this rate. Whether they are compelled to do so by the terms of the Commission's order or are simply permitted by the Commission to do so may be debated; but the fact is

*When we speak of potential routes, we refer to the so-called rate-making routes, which may or may not be actual routes, namely, the shortest routes over which carload traffic could be transported without transfer of loading. In many cases these are not actual routes and could not be enforced against the carriers under par. (4) of sec. 15. *United States* v. *Missouri Pacific R. R.*, 278 U. S. 269.

that all routes apply the common rate if they participate in the transportation.

In considering this whole question of alleged conflict of principle between the two commissions, and the absence of evidence to support the Commission's conclusion that joint line arbitraries must be enforced on intrastate traffic in Georgia, it must be borne in mind that there is a striking inconsistency with the Commission's action in numerous other cases. The Georgia Commission has only followed the course which the Interstate Commission has taken in other cases, with respect to class rates, cement rates, brick rates, rates on sugar, fertilizer, plaster and numerous other heavy loading and low grade commodities.

The District Court considered this phase of the case and was of opinion that the question whether compensation for the extra cost of joint-line hauls shall be had in a separate joint scale of rates or in a slightly higher average of rates, is within the competency of the Commission to decide. (P. 468 of 42 Fed. (2d); R. 171.) The court called attention to the conflicting decision of the Commission respecting the fertilizer rates, where a uniform interstate scale had been prescribed applicable alike to joint-line and single-line hauls, as involved in *State of Alabama* v. *United States*, 279 U. S. 229, remanded and again decided by the District Court for the Northern District of Alabama, 42 Fed. (2d) 469. That case now is again pending in this court by appeal.

We agree that it is for the rate making judgment of the Commission to determine whether rates for a joint-line service are reasonably and fairly to be made higher than rates for other single-line services. But this should be done by definite findings and upon a record of evidence which shows the comparative costs or the conditions of transportation governing the various services.

Principles Affecting Joint-Line Rates as Laid Down in other Decisions.

The Commission has not led the parties to suppose that in promulgating its order in this case it gave any real consideration to the principles or theories affecting the adoption of joint-line arbitraries or higher rates for joint-line hauls than for single hauls. There is nothing to reconcile what was done in this case with the expressions in this regard in the *Southern Class Rate Investigation*, 100 I. C. C. 513. The Commission there said, in the chapter devoted to joint-line differentials, page 627:

> "Joint-line differentials or arbitraries rest on the theory that a joint-line haul costs more than a single-line haul. But no attempt has been made to measure or even to estimate this extra cost, and the differentials proposed are the product of unguided judgment. Nor is extra cost in physical handling always incurred. If, for instance, all lines in southern territory were consolidated under a single ownership, it does not follow that the method of operation over what are now joint-line routes would in all cases, or even in most cases, be changed materially. While joint-line hauls ordinarily involve switching operations at the junction point and sometimes the transfer from car to car of less-than-carload freight, similar operations are common in the case of single-line hauls."

After mentioning the fact that many of the complications which have been urged as an objection to the application of uniform distance rates are created by the use of joint-line differentials, the Commission entered its finding:

> "That *no sufficient reason has been shown for joint-line differentials or arbitraries, but that the absence of such differentials is a factor which should be given some weight in determining the level of the distance scale.*"

After that finding, appears the following statement, which is of peculiar significance in the light of the recent decision of the Supreme Court in the so-called *Subiaco case*, 278 U. S. 269, under par. (4) of sec. 15 of the Act:

> "In this connection it should be noted that the fixing of the rate between any two points on the basis of a short-route distance does not mean, necessarily, that such route need be open for the movement of traffic. Carriers can not be required to short-haul themselves when they can secure a longer haul by a reasonably direct route; but if they choose the latter alternative it does not follow that the reasonable rate must be fixed by the longer route."

The decision in the *Southern Class Rate Case*, was based on extensive hearings and an intensive study by Commissioner Eastman into all of the transportation principles which must be considered in laying down mileage scales. The final reports as he drew them for the Commission fixed one scale for uniform application to joint-line and single-line routes alike, and in conjunction with the mileages over the theoretical routes representing the shortest hauls by which traffic could be transported without interchange of loading. He recognized that the one basis was inseparable from the other and that it would be impossible, without serious incongruities and countless inconsistencies, of the type illustrated in our discussion of this case, to attempt to set up two scales and to use theoretical routes for rate making purposes. A notable error in the Commission's report here assailed is its disregard of the principles discovered and recognized in the *Southern Class Rate Case*, and which were followed and applied in subsequent cases which we shall now cite:

In *Southern Cement Rates*, 132 I. C. C. 427, the carriers had proposed a scale of single-line rates and a higher scale of joint-line rates for shorter distances, the

two scales merging at 100 miles. But the Commission prescribed a common scale for single and joint-line application for all distances and made this scale apply over the shortest routes by which carload traffic could move without transfer of lading. No sound grounds have been stated by the Commission in its decisions in the cases here under review, and no facts were developed in the record before the Commission, which would justify a different rule to govern the interstate rates and state rates on sand and gravel, that is, respecting the treatment of joint-line versus single-line routes, than that which the Commission prescribed for Portland cement and for all commodities which take rates directly or indirectly related to the class structure.

It is hard to reconcile the sweep of the hand by which the Commission adopted a so-called single-line scale and a so-called joint-line scale in its report in this proceeding, without a word of explanation of the reason or necessity therefor, with what it has said and done in numerous other cases prescribing mileage scales on other commodities and without joint-line arbitraries, single scales applying alike to joint-line and single-line mileages. *Southeastern Sugar Investigation*, 132 I. C. C. 477; *Fertilizers Between Southern Points*, 113 I. C. C. 389; *Ohio Farm Bureau Federation Case*, 120 I. C. C. 361; *Salt Between Western and Southwestern Points*, 120 I. C. C. 91; *Western Cement Rates*, 48 I. C. C. 201; 52 I. C. C. 225; 69 I. C. C. 644.

In a number of other decisions wherein higher joint-line scales have been allowed to some extent than for single-lines, the two scales have merged at relatively short distances, as 70, 80 or 100 miles. *Lime Between Southern Points*, 129 I. C. C. 635; *Brick and Clay Products in the South*, 88 I. C. C. 543.

This court has already had before it the order of the Interstate Commerce Commission prescribing the rates on fertilizer and fertilizer materials in a Section 13 case which was brought up by the State of Alabama, *State of Alabama* v. *United States*, 279 U. S. 229. After further proceedings in the court below, 42 F. (2d) 469, that case is again to be considered by this court. In the underlying case, the Commission did just the reverse of what it is doing here in the matter of requiring a single scale for common use on all routes, whether composed of one or more carriers.

EVIDENCE LACKING BEFORE COMMISSION ON ESSENTIAL FEATURES AFFECTING JOINT-LINE HAULS.

In reviewing the evidence of record before the Commission and considering the intended effect of its conclusion with respect to rates for joint line hauls there are two remarkable circumstances which should not escape the notice of the court, both of which tend further to invalidate the order:

First, There is very little evidence, if any, as to whether important particular routes, in Georgia and also interstate, are to be treated as joint-line or as single-line routes under the terms of the Commission's reports. Competent and relevant testimony in that direction was offered and excluded by the presiding Examiner.

Second, There is no substantial evidence tending to show that joint-line hauls are necessarily more expensive than single-line hauls of corresponding distances, so that a higher scale of rates is proper or essential thereon for general application. To the contrary there is specific evidence to the effect that many joint-line routes are less expensive than other single line routes of the same distances.

In proposition V, we shall discuss the lack of evidence of record to support essential findings and shall there point to all of the evidence that is found of record dealing with transportation conditions. We desire at this point, however, briefly to discuss certain features that are omitted from the testimony and the result on the decision of the case.

Facts Excluded From Record Respecting Specific Joint-Hauls.

If it be admitted, for purposes of argument, that the rates for joint-hauls shall be higher than for one-line movements, then the question whether a movement from point of origin A to destination B is a joint-line movement or is to be treated as a single-line movement for rate making purposes is primarily a question of fact. It is purely a question of fact, when the definition has been adopted and the distinction between single and joint-line routes has been laid down.

The Commission's original report sets forth on page 166 that in determining whether hauls are single-line or joint-line, for the purposes of applying the prescribed maximum scales, "carriers under common control or management shall be regarded as one line." There is, of course, room for dispute—as a question purely of fact—whether a particular movement within the State of Georgia over certain lines is a joint-line movement properly subject to the joint-line rate basis as defined, or is to be treated as a one-line haul. Counsel for the Georgia Commission was obstructed in every effort to elicit the material facts bearing on two particular cases and objections to his questions were sustained by the presiding Examiner, so that the facts were not developed. We refer to the situation with respect to the Georgia, Southern &

Florida Railroad and the facts as to the Charleston & Western Carolina. (R. 660, 672.)

The Georgia, Southern & Florida Railroad Company is a separate railroad corporation which files annual reports with the Interstate Commerce Commission and the Georgia Commission; it is named in the tariffs as a carrier participating in joint rates and maintaining individual local rates, and its line is separately operated from the Southern Railway, although it is a part of the Southern Railway System.

The United States District Court for the Northern District of Georgia, King, circuit judge, and Ervin and Sibley, district judges concurring, entered their opinion and decree dated May 8, 1923, enjoining the Georgia Commission from enforcing upon the Georgia, Southern & Florida Railroad, a single-line basis of rates with the Southern Railway. *Georgia, Southern & Florida Railway Co., et al.*, v. *Georgia Public Service Commission, et al.*, 289 Fed. Rep. 878. The theory of the appeal by the railroads to the court and of the court's decision was that:

> "The fact that one railroad company owns a controlling interest in the stock of another company owning and operating a connecting line does not authorize the application of different rules as to traffic relations between them than those applied to other connecting lines."

The opinion of the court is of great interest in the present matter. What the carriers have now done with respect to the interstate rates on sand and gravel between the Southern Railway and the Georgia, Southern & Florida Railway is either all wrong *in principle*, or the court's decision was wrong. But the facts were not allowed to come out in the Commission's hearing. (R. 660, 672.)

The same peculiar state of affairs exists in the record with respect to the Charleston & Western Carolina Railroad. (R. 674, 694-7.) In a former decision of the Commission it was treated as operating two-line routes in connection with the Atlantic Coast Line Railway.

Sand and Gravel from Stations on the Charleston & Western Carolina Railway, 83 I. C. C. 436. It appears from that decision that the rates on sand and gravel from stations on that railway to points on the Atlantic Coast Line were formerly on a single-line basis and were advanced to a joint-line basis. In dealing with the rates for the future, the question is always pertinent as to what are now the facts; and it is commonly understood that the Charleston & Western Carolina is now under common management and control by the Atlantic Coast Line. The two roads are charging the joint-line basis, and the facts were not developed in this record.

Meager Evidence of Record to Support Higher Joint Line Scale.

There is very little evidence indeed in the original record in this case addressed to the question of joint-line differentials, or to the question whether the same scale should be applied to joint-line hauls as to single-line distances for arriving at the maximum rates to be charged respectively over the single or joint-line routes or commonly to both.

The absence of substantial testimony to indicate that joint-line hauls in Georgia, state or interstate, should be subject to higher rates than single-line hauls, because of any real differences in transportation conditions, is all the more striking because of what the Commission has held in numerous cases on this subject. We have al-

ready quoted from the *Southern Class Rate Case*. May we now invite the attention of the court to what the Commission elsewhere has held:

In *Sheridan Chamber of Commerce* v. *C., B. & Q. R. R. Co.*, 26 I. C. C. 638, at page 649 of the report, the Commission said:

> "Each carrier participating in a two-line haul will find that operating expenses for its portion of that haul are less than they would be if only a one-line haul to the junction point were involved, and instead of either delivering the car or receiving it from a connecting carrier, it were necessary to deliver it to the consignee or receive it from the consignor. The one-line haul involves two distinct terminal services. Each carrier's share of a two-line haul involves but one distinct terminal service, plus a switching movement from one carrier to the other. The entire two-line haul involves two distinct terminal services, plus the switching movement from one line to the other. In large cities, where the terminal of one carrier is far removed from that of the other, switching from one to the other often involves much greater expenditures than in the present case. However, it involves less expenditure than the terminal service of delivering to consignee or receiving from consignor at that station. But where the physical connection between connecting carriers is as simple as in these small western towns, involving no expensive terminal service, the additional cost due to the switching movement is very small, so small, in fact, that it may not properly be made the basis of an additional charge for a two-line haul of substantial length."

The foregoing language may well apply to these junctions in Georgia, but the evidence is lacking in this case along that line.

Again, in *Sand and Gravel from Lafayette, Ind.*, 77 I. C. C. 719, at page 721 of the Commission's report, it is stated:

"It is contended that normally the rate for a two-line haul, especially for short distances, should exceed the rates for single-line hauls for comparable distances, but while that principle has been applied in numerous instances, the reasonableness of the higher charge for a two-line haul must be determined from the facts and circumstances, not from the application of that principle alone."

In *Somers* v. *N. Y., O. & W. Ry. Co.*, 78 I. C. C. 243, the Commission stated at page 245:

"Defendants introduced no evidence to show that the two-line haul results in a greater cost of service than the one-line haul.

In *Coakley* v. *Director General*, 59 I. C. C. 141, we had under consideration rates on coal from the Carbondale district of Pennsylvania to South Utica, N. Y. The defendants contend that the rates to South Utica were justified on the ground that they covered joint movements over the Delaware & Hudson and the Ontario & Western as compared with the lower rates for one-line hauls over the Lackawanna or the Ontario & Western. In refusing to sustain this contention we said:

'We have frequently said that carriers may justify a reasonably higher rate for a two-line than for a one-line haul. *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C. 160; 23 I. C. C. 656. But the mere fact that one haul is two-line and another one-line does not in and of itself justify a higher charge for the two-line haul. The reasonableness of the higher rate "depends solely on the facts and circumstances made to appear which show an increased cost or some other fact or circumstance which would warrant a higher charge." *Stonega Coke & Coal Co.* v. *L. & N. R. R. Co.*, 39 I. C. C. 523, 551.'"

In the light of the foregoing decisions, the lack of any evidence whatsoever in this record to indicate that transportation of sand and gravel over two or more lines in Georgia territory is more expensive than when for like distance over single lines, surely constitutes a fatal defect in the case.

Same Carriers Must Serve Preferred and Prejudiced Points.

The Commission's report in finding unjust preference to the Georgia shippers and undue prejudice against interstate shippers, in general terms, has had the effect of increasing a great many of the state rates in Georgia which the Commission would not have changed if all of the rates had been interstate rates! The jurisdiction of the Commission over state rates is not a primary, direct and ordinary jurisdiction as is its authority over interstate rates. Surely it cannot be said that the Commission may require a change in a rate within a state under circumstances which would not warrant it in requiring such change if the particular rate were an interstate rate. Its secondary jurisdiction over intrastate transportation surely cannot go farther than its primary authority over interstate rates. Yet that has been done in this case.

The Commission has uniformly held that the rate from A to C (an interstate movement), cannot be held to be unjustly discriminatory in its relationship to the rate from A to D, or from B to C (both interstate), unless the same carriers participate in the several rates and unless, therefore, the alleged preference and the alleged prejudice *flow from a common source.* To state an extreme illustration, the Southern Railway cannot be adjudged guilty of undue prejudice for whatever rate it may maintain for 600 miles from a point in Georgia to Washington, because of a lower rate for like distance even under circumstances shown to be similar, but which is maintained by the Baltimore & Ohio Railroad from a point in Ohio to Washington, or by the Louisville & Nashville for like distance from a point in Georgia to a point in Indiana.

Yet in countless instances, the rates in Georgia which are being increased as the result of the Commission's decision herein are over a railroad which does not maintain or participate in a corresponding interstate haul. This feature was utterly ignored by the Commission, although called to its attention in argument.

We ask the court to notice what the Commission has said in other cases dealing with this principle. It has always held that the discrimination provisions of the Act must be applied to the carriers individually, not collectively. For example, in *Chicago Lumber & Coal Co.* v. *Tioga Southeastern Railway Co.*, 16 I. C. C. 323, the Commission held, (our italics) and quoting from page 332:

> "Regarding the charge of discrimination because of higher rates on the lines west of the river than east thereof, it is only necessary to say that a carrier cannot discriminate within the meaning of the statute except as between those whom it serves or whom it may lawfully be required to serve. It is not guilty of discrimination merely because it does not afford as favorable rates as others serving a different territory, though the products carried by each are brought to the same market. *The law does not deal in these matters with all carriers collectively as a single unit or system, but its commands are directed to each, with respect to the service which it is required to perform.*"

The courts have also taken a like view that there is no violation of Section 3 unless the particular carrier defendant is responsible for both the undue preference and the undue prejudice as alleged. So in *Penn Refining Co.* v. *Western New York & Pennsylvania R. R. Co.*, 208 U. S. 208, 52 L. Ed. 456, an order of the Commission under Section 3 was set aside as to the Lehigh Valley Railroad on the ground that that carrier was not responsible for the alleged preference and prejudice.

In *Interstate Commerce Commission* v. *Diffenbaugh*,

222 U. S. 42, 56 L. Ed. 83, was set aside an order of the Commission finding the Union Pacific Railroad Company guilty of a violation of Section 3 in respect of allowances paid to elevator operators. In that case in the Circuit Court (*Peavey & Co.* v. *Union Pacific R. Co.*, 176 Fed. 409, 424, 425), it was urged that the difference between the allowance paid at Omaha and the allowance paid at St. Louis constituted a violation of Section 3. The Circuit Court held that the fact that the Union Pacific did not reach St. Louis extracted "from this difference every element of unjust discrimination or undue prejudice." And as to this the Supreme Court said (222 U. S. 48):

> "But, as remarked below, the Union Pacific could not be complained of on this ground."

In *East Tennessee, V. & G. Ry. Co.* v. *Interstate Commerce Commission*, 181 U. S. 1, 18, the court set aside an order requiring the carriers to maintain no higher rates to Chattanooga than to Nashville, sustaining the contention of the carriers that the lines responsible for the preferential rates to Nashville were not responsible for the prejudicial rates to Chattanooga, Mr. Chief Justice White saying (italics ours):

> "The prohibition of the 3d section, when that section is considered in its proper relation, is directed against unjust discrimination or undue preference arising from the *voluntary and wrongful act of the carriers complained of* as having given undue preference, and does not relate to acts the result of conditions *wholly beyond the control of such carriers.*"

It must be remembered that under the law as uniformly construed by the courts and by the Commission, only such preferences and prejudices are prohibited as are unjust and undue. As to whether a particular preference is undue depends on whether the preference and the prej-

udice are created by the act of one carrier or set of carriers serving both points, and upon the existence of circumstances of similarity of transportation, beyond a mere equality of mileage.

The Commission's decision is arbitrary and should be declared void because it does not fulfill these requirements.

We would not invoke this principle if this were a case in which the Commission had made definite findings that the aggregate revenue of the interstate transportation system is being burdened by reason of subnormal intrastate rates on these materials, and if there was substantial evidence of record leading to such a conclusion. In such case, it may well be that an individual road might be required to raise its subnormal rates, even though satisfactory to it, for the adverse effect on the railroad situation as a whole. It is not necessary for us to consider that question here.

FOURTH SECTION, LONG AND SHORT HAUL, VIOLATIONS.

Under Section 4 of the Act, carriers may not lawfully charge more for transportation for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance, *excepting,* that in particular cases the Commission may authorize departures from this rule. This is known as the long and short haul rule; and while it relates to interstate rates, there is a corresponding provision in the Georgia statutes regulating state rates in that state.

Section 4 of the Act also contains what is commonly known as the equi-distant clause and which reads—

> "if a circuitous rail line or route is, because of such circuity, granted authority to meet the charges of a more direct line or route to or from competitive

points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points;"

The interstate rates on sand and gravel in Georgia territory are shown by the record to be honeycombed with fourth section departures, or violations of the long and short haul principle, for which the Commission has ostensibly granted *general* authority or relief. Its orders authorizing such so-called fourth section relief go far beyond a mere exception in favor of "particular cases." It has whitewashed ever so many violations of the equidistant clause which we have quoted above. Such violations are really inherent in the Commission's formula for joint-line and single-line rates, to be met by competitive routes, as laid down in the original report herein.

On the other hand, there were few, if any, violations of these principles in the intrastate rates maintained in Georgia under the Georgia Commission's uniform scale governing both single and joint-line hauls.

The result of the final report and order of the Commission has been to create within Georgia numerous violations of the long and short-haul rule, for which the Commission has not granted authority and with which it does not expressly have power to deal under the language of the Act. Instances of this result will be found depicted on charts F and G in Appendix 3 to this brief.

We submit that an order having that effect should be condemned as arbitrary and void.

V.

There was no substantial evidence of record to sustain a conclusion that there was an unlawful disparity between the intrastate rates and the rates charged for interstate transportation.

The printed record is voluminous, and pages 250 to 813, or more than 560 pages of this printed record, comprise the narrative of the testimony, which is condensed. The original exhibits were certified to this court, but not printed, and consist of 346 separately numbered tables or statements of rates, statistics, etc.

It would therefore appear at first blush, that the Commission had before it a very comprehensive record. The appellees may assert that a record of this size contains many features of evidence which cannot be called to the court's attention within the scope of a brief or oral argument and that it supports every essential finding.

On behalf of the appellants, however, we assert that the great bulk of the exhibits and most of the oral testimony were devoted to a study of the rates in effect on interstate traffic and within Georgia, for the distances computed by the theoretical routes which we have heretofore described and without showing the mileages by actual routes of transportation. We further assert that in making up their record to show departures in the state rates from the interstate rate-making formula, the complainants and the railroad companies overlooked offering any proof whatever on other very essential features of the case. We have discussed certain of these phases of the case under the preceding section of this argument and shall here deal with only two phases of the evidence of record:

The record is wanting of evidence, either oral testi-

mony or exhibits of statistics or operating facts, tending to establish the transportation conditions, with respect to two major phases of the case:

First, there is an absence of showing that individual rates for individual movements in Georgia ought to be the same as the rates charged for individual interstate movements into Georgia, because of similarity of the governing circumstances and conditions. We do not assert that it would be necessary to establish this, in great detail, in any case where there is a general showing that the rates actually charged for the state movements are substantially lower than the general level of the rates actually charged for interstate movements. Yet there should be a sufficient showing to be representative, even in a case of that sort. In the present case, we contend there is not even a general showing that the rates actually charged for the actual transportation in Georgia are substantially below the general level of the actual interstate rates, but only a comparison of state rates against the prescribed formula.

Second, there is an absence of evidence tending to show that the transportation services are substantially more expensive or difficult where there are two-line hauls than for one-line hauls, so that a higher rate basis is necessary, to avoid unjust discrimination on the joint-line traffic than on the single-line traffic of sand and gravel.

The only evidence in the entire record dealing with the transportation conditions is very general and distinctly negatives rather than confirms any contention of similarity of conditions affecting individual rates which are required to be increased and likewise tends to disprove that conditions affecting joint-line movements are necessarily less favorable than for single-line movements of these commodities.

Mr. L. V. Crane, an official of the Southern Railway with long experience in rate matters, although not identified with the operating department, testified in the original hearings and was examined by the counsel for the friendly Alabama interests as to transportation conditions. We ask attention to pages 415 and 416 of the printed record. The witness said, in substance:

> "We have not felt that in the formulation of any mileage scale for our lines it is possible to take into account all of the different transportation characteristics on different parts of our line, where there are extremes of differences in the same territory and over the same lines, as, for example, North Carolina, the conditions are different on the main line from those on the Asheville-Salisbury line. There are operating details in the mountainous regions called difficulties, and there are divisions over which, by reason of grades, curves, etc., transportation costs are relatively greater than on the more favorable operating divisions. The most we can do in devising a comprehensive rate structure is to be guided by some thought of averaging the various instances and conditions as to operating details."

These statements by Mr. Crane seem to us to afford a very striking admission that the transportation conditions would warrant much higher rates on certain sections of railway and between particular points of origin and destination than on other sections and between other points. Stated conversely, the conditions would justify lower rates on certain sections or between certain points than elsewhere. This is enlightening because the interstate rate from Montgomery, Alabama, to Atlanta, Georgia, 176 miles, is 5 cents below the Commission's formula makes and less than its maximum scale.* (R. 690.) This is perhaps due to favorable transportation

*The shortest route and the rate-making route discounts the scale 5 cents; longer routes charge very much less than the scale would make as applied to their mileage.

conditions between those points. The state rate from Lowery, Georgia, to Atlanta, 180 miles, was also 5 cents below the Commission's formula and has been brought up to the full maximum scale basis by the Commission's order. There is no testimony of record tending to show that the transportation conditions from Lowery, Georgia, to Atlanta may not be extraordinarily favorable, in and of themselves, or as compared to the general interstate situation, so that a discount below the maximum scale may be proper, if the conditions are considered, from Lowery to Atlanta, the same or even greater than the discount actually being made by the carriers in their interstate rate from Montgomery, Alabama, to Atlanta over the rate-making route.

The only other testimony as to transportation conditions by the carriers or complainants before the Commission is meager and is very general. There was no operating witness in the entire case. The views of the traffic men as to operating conditions were all general and there were in fact only three expressions on that point which we can find in all the testimony.

Witness Doss, testifying as the traffic witness for the Atlantic Coast Line, simply expressed the opinion that the transportation and other conditions on the Atlantic Coast Line are such that varying levels of rates on these commodities are not justified and cannot be operated without causing discrimination and trouble. (R. 626.)

Besides Mr. Doss and Mr. Crane, Witness T. A. Burke, for the Nashville, Chattanooga & St. Louis Railway said, in effect, that there was no transportation condition on his line that he knew of that would justify charging relatively lower rates in Georgia than from Chattanooga to Georgia destinations. (R. 682.)

In the argument before the Commission the complain-

ants made quite a point of an admission of the principal witness for the Georgia Commission, Mr. E. M. Price, its rate expert, and which is reflected in a statement in our brief from which the Commission quotes on page 325 of its supplemental report, Vol. 160. This statement is to the effect that there is not claimed to be *any transportation reason* for a different basis of rates on intrastate commerce in Georgia than on interstate traffic into, out of, or across the State of Georgia. The appellants never have claimed that the state line is any impediment in transportation or that crossing that line means that a given service should pay a higher or lower rate than any other service wholly within the state. But that is not to say that any rate within the state which does not conform strictly to the interstate mileage scale is unlawful. Nor is to say that for given movements within the state the conditions may not be such as to warrant lower rates than commonly applied on other movements. Mr. Price's testimony (R. 773) was simply this, that he did not feel that when a shipment of sand and gravel crossed the Georgia-Alabama state line it should pay, *by reason of that fact*, any higher or lower or different rate than if under the identical distance and other conditions it did not cross the state line. He did not know of any difference in intrastate transportation conditions requiring the maintenance of a different basis of intrastate rates on these commodities within Georgia than found reasonable for interstate transportation.

Again, we remark, that this does not constitute a showing that from Junction City, Georgia, to Atlanta, Georgia, or from Norris, Georgia, to Atlanta, Georgia, or from Stockbridge, Georgia, to Brunswick, Georgia, the transportation conditions are such that rates lower than the Commission's general interstate formula may indicate for

those distances are preferential and unduly low. It does not indicate that the service between those points may not in fact be performed under such conditions that the rates therefor properly might be somewhat lower than the full interstate basis, just as the carriers have discounted the interstate scale from Montgomery to Atlanta where the conditions undoubtedly are favorable. The court will please take note that the carriers, in complying with the Commission's order, have increased the intrastate rate from Junction City to Atlanta from $1.00 to $1.10; the state rate from Norris to Atlanta has remained unchanged at $1.00; and the state rate from Stockbridge, Georgia, to Brunswick, Georgia, has been *reduced* from $1.60 to $1.50 by the assailed order. (Exhibits 169-B and 178-B.)

The second phase of the transportation testimony is with regard to single-line versus joint-line hauls. There is not a syllable of testimony in the record by any witness tending to show that a joint-line service necessarily is more expensive than a single-line service of the same distance, just because it is joint-line; and the only evidence on that point is to the contrary.

This lack of evidence is particularly striking in view of the fact, elsewhere herein discussed that as to the entire class rate structure, as to numerous other commodities, such as cement, brick, fertilizer, sugar, etc., the Commission has itself prescribed the same rates for single-line and joint-line application throughout the southeastern territory. In other words, the rule they are here pretending to apply on interstate sand and gravel traffic, and actually applying on state traffic, is an exception to their general rule and practice. If such exception is to be required and an order thereon confirmed against the State Commission, it would seem particularly neces-

sary that there should be definite evidence to establish that the joint-line conditions are essentially less favorable and require a higher basis of rates. The only transportation testimony on this point was given by Mr. Price who happened to be quite familiar with a particular movement as to which he stated the conditions. We refer to pages 779 and 780 of the printed record. Mr. Price there points out that the Commission's scale would increase the joint-line rates from Junction City, Georgia, to various stations on the Southern Railway, between Atlanta and the South Carolina state line, including Norcross, Buford, Gainesville, and Mt. Airy. These state rates from Junction City were subsequently increased by the carriers under cover of the Commission's order, through the substitution of the higher interstate joint-line scale for the common scale which had been enforced by the Georgia Commission against all hauls single and joint-line. Mr. Price mentioned the fact that the state rates from Rollo, Georgia, a producing point on the Southern Railway to Norcross, Buford, Gainesville, and Mt. Airy were not to be increased, because the hauls were single line and the Commission's interstate scale was the same as the Georgia scale applied thereto.

Mr. Price particularly developed in his testimony that the operating and transportation conditions from Junction City to these points were, if anything, more favorable than from Rollo to these points. He described in detail, as the narrative statement on R. 780 will confirm, that the single line service from Rollo to these junctions involved passing through the Atlanta yards by the same operating methods and subject to the same expense, as the joint-line traffic from Junction City when interchanged between the Atlanta, Birmingham and Coast Railroad with the Southern Railway.

We have here referred to all of the testimony in the record bearing on the transportation circumstances and conditions. There is no other testimony that we are able to find and none that was cited by counsel in the argument before the District Court.

We submit that this is an absence of any evidence to sustain essential findings of similarity of conditions and circumstances without which the Commission could not properly find undue prejudice and violation of Section 13 of the Act.

VI.

The Commission's order should be set aside because there were no findings or evidence that the intrastate rates were an undue burden upon the carriers' interstate revenues or that the alteration thereof would produce additional revenues.

In the bill of complaint in No. 563 the eighth ground of error alleged in the Commission's report is that there was no substantial evidence before the Commission which would warrant a finding of unjust discrimination against or of *any burden upon* interstate or foreign commerce, by reason of the rates maintained in Georgia. (R. 10.) It is also one of the assignments of error, No. 11, in the appeal to this court. (R. 177.) This point was urged in the oral argument before the three judges, but was not disposed of in their opinion. This court had not decided then the case of *State of Florida, et al.* v. *United States*, (Advance Sheets of present term, No. 5, page 212), in which another order of the Interstate Commerce Commission, directed against intrastate log rates in Florida, has been set aside.

As we understand the court's decision in that case,

the decree of the court below was reversed and the Commission's order therefore is enjoined because:

> "The Commission made no findings as to the revenue which had been derived by the carrier from the traffic in question, or which could reasonably be expected under the increased rates, or that the alteration of the intrastate rates would produce, or was likely to produce, additional income necessary to prevent an undue burden upon the carrier's interstate revenues and to maintain an adequate transportation service."

The appellants ask the court to notice there is an entire absence of any findings either in the original or final decisions of the Commission in this case as to the revenues, past and prospective, under the rates involved herein.

In the review of the evidence, in the final decision, there are references to the volume of the movement and the revenues of certain of the carriers. See pages 317 and 318 of the report in Vol. 160. (R. 100-1.) But these statements fall far short of being equivalent to findings, although correct so far as they go and in accordance with testimony of record. The facts thus set forth from the testimony are not truly indicative of the revenues which could reasonably be expected under increased rates proposed on state traffic, or that the new rates established in Georgia are likely to produce substantial additional revenues for the carriers.

We apprehend that in order to fulfill the requirement suggested in the *Florida Log Case*, findings are necessary, with substantial evidence of record to support them, that (a) the state rates actually charged are lower than the interstate level actually charged; and (b) that putting the state rates on the interstate level is likely to increase the income of the carriers. To establish burden on interstate commerce and upon the carriers' rev-

enues essential to maintain an adequate transportation service, it surely would not be sufficient to establish simply that increasing the state rates *to a higher level* would probably produce more revenue, without showing that the state rates in force were less than the interstate rates generally charged. Nor would it be sufficient to show that the state rates were less than the interstate level, if increasing the state rates probably would curtail the state traffic to a degree representing a substantial diminution in the total revenues.* In either case, there would be no undue burden on interstate commerce and interstate railroad revenues.

We have pointed out that there is no finding in the reports of the Commission as to the revenue feature of the intrastate rates, that is to say, showing that they are unduly burdensome on the interstate transportation system of the respondent carriers.

An examination of the voluminous record will disclose no substantial testimony tending to show that placing the state rates on the full maximum basis of the Interstate Commerce Commission's formula, will substantially increase the revenues of the defendant carriers. The evidence of the several witnesses is reflected in its strongest possible light by the statements on pages 317 and 318 of the Commission's report to which we have already alluded. (R. 100.)

It will be observed that if the testimony of Alabama shippers were to be taken at its full face value, the probable effect of increasing the rates in Georgia would be to increase the long-haul movements of gravel from the

*We adopt the expression of this Court in *Railroad Commission of Wisconsin* v. *C., B. & Q. R. R. Co.*, 257 U. S. 563, at page 591:

"It may well turn out that the effect of a general order in increasing all rates, like the one at bar, will, in particular localities, reduce income instead of increasing it, by discouraging patronage."

Montgomery district, of slag from the Birmingham district and of stone from the Chattanooga district, into Georgia territory; and since it may be presumed consumption will not be increased, there would be a consequent diminution of the short-haul traffic within Georgia. The long-haul rates prescribed by the Interstate Commerce Commission are on a much lower basis than the corresponding rates prescribed by the Georgia Commission, so much so that the interstate order has resulted in reducing practically all single line rates in Georgia for distances over 200 miles. So much so, also, that three members of the Commission (Aitchison, Woodlock and Campbell), dissented in the original or supplemental reports. (R. 63, 112.) It seems quite possible, therefore, that increasing the rates in Georgia may so divert traffic that the carriers will be hauling more stone, sand and gravel for long hauls at relatively unprofitable rates and will be moving less traffic for short hauls at relatively profitable rates, so that their net revenues in the aggregate will be substantially diminished by the increasing of the short-haul rates within Georgia and the reduction in long haul state rates. We assert that this condition already has occurred since the order became effective and that it will be the real permanent effect of the order. There is no testimony to the contrary in the record; and there is much indirect or circumstantial evidence to support our assertion.

With respect to this whole revenue question, however, it will be particularly noticed that the only comparisons of record are between the revenues realized at the rates charged in Georgia and the rates that would be charged on the same traffic if the Commission's maximum scale basis were applied thereon. This ignores the true test of the state rates with the level of rates actually being

charged by the respective defendants for contemporaneous services of interstate transportation.

To clarify what we mean, take the situation from Montgomery to Atlanta: Undoutedly this represents by far the greatest volume of movement of these materials occurring between any specific points anywhere in Georgia territory, or in the states contiguous thereto.. The rate from Montgomery to Atlanta is 5 cents per ton less than the Commission's basis. (R. 690, 736, 754.) There is no route from Montgomery to Atlanta which is not charging a lower rate than the Commission's order fixed as maximum.* Of course, there is nothing in the Commission's orders requiring the carriers from Montgomery to Atlanta to charge the full scale basis and it was their privilege to shrink the rates. The fact is they are charging less than the Commission's formula would make for the distance involved; and we concede there may be favorable transportation conditions justifying the present rate. If that rate were advanced, however, to the maximum basis authorized by the Commission's order, it would produce many thousands of dollars additional revenue for the carriers. We claim it would produce more revenues for them than any rate in Georgia which has been raised could possibly produce because of the relative volume of movement. Knowing that this was true, the appellants requested the defendants in the hearing to produce the

*The mileage over the single-line or system route of the Western of Alabama and Atlanta & West Point Railroads from Montgomery to Atlanta is 176 miles, for which distance the maximum scale rate is $1.35. (R. 736.) The only other single-line route from Montgomery to Atlanta is via the Central of Georgia Railway and is considerably longer, 240 miles, for which the scale rate would be $1.50. The joint-line routes of the Seaboard Air Line in connection with the Central of Georgia, 236 miles, and the Louisville & Nashville, in connection with the Southern Railway, 238 miles, would be subject to scale rates of $1.60. But the interstate rate in effect over all these routes is $1.30. This appears from the tariffs, filed with the Court. (R. 669, 690.)

figures of the movement from Montgomery to Atlanta. The request was refused on the ground that it would be an unlawful disclosure of the business of the railroad patrons, *i. e.*, the several shippers of Montgomery. How specious was this objection will be seen when we point out that the same carriers already had filed exhibits giving the precise movements from individual plants in Georgia, to individual destinations fully disclosing their traffic affairs, to all who might read the record. (R. 685-687, 689.)

The appellants thereupon filed a formal motion with the Commission requesting that this information be adduced and the motion was denied by formal order of the Commission. (R. 245, 249.)

We venture to say that if the Commission would undertake an analysis of the revenues of the carriers, based upon a careful revenue study of the traffic which has moved for a representative period, it would be compelled to find: That by meeting the rates of competitive lines on interstate traffic, the carriers collectively have shrunk their revenues on interstate traffic many thousands of dollars per annum below what they would collect if the lines charged the maximum rate applicable for the actual distances of transportation between interstate points. That the foregoing shrinkage of revenue is quite comparable with the difference in revenues on state traffic collected at the rates in effect prior to the change required by the Commission's order and the rates that would result from charging the full maximum interstate scale on the corresponding movements. That the effect of applying the Commission's scale in lieu of the former rate adjustment is to substantially increase long-haul traffic at relatively unprofitable rates and substantially diminish short-haul traffic at relatively profitable rates.

We further contend that an examination of the longer haul traffic within Georgia will disclose that the Commission's order has brought about reductions of thousands of dollars per annum in net revenue on state traffic in Georgia, through changing the course of the business within the state, diverting traffic from one plant to another plant, both shipping to points in Georgia, (a) by increasing the relative volume of long haul and reducing the relative volume of short haul traffic; and (b) by cutting down the joint-line traffic, thus circumscribing the area of distribution of the Georgia plants.

Of course, these contentions and assertions are more or less speculative, since there is no definite evidence of record which we can cite as supporting them. But they go to the propositions on which we feel we are entitled to rely, namely, that the report lacks the findings cited by the court as requisite in the *Florida Log Case* and that there is no substantial evidence of record that would support such findings.

VII.

The Commission did not have a full hearing and make a due investigation, as required by the statute, sufficient to support a section 13 order.

We are not merely asserting that the Commission denied a full hearing to any party desiring to introduce proof, although material evidence was excluded which was strictly relevant to the issues in the case. The major defect in the Commission's procedure lies rather in a failure to investigate and develop the facts as to certain phases of the matter essential to the entry of a valid order under sections 13 and 15 of the Act. In other words, the procedural requirements of the Act have not been met by the Commission.

THE PROCEDURAL REQUIREMENTS OF SECTION 13 HAVE NOT BEEN MET.

Before the amendment of Section 13 by the Transportation Act of 1920 the Commission's authority to deal with intrastate rates which in some way infringe on interstate commerce, was an implied authority under the doctrine of the Supreme Court's decision in the *Shreveport Case, Houston East and West Texas Railroad Company* v. *United States,* 234 U. S. 342; 58 L. Ed. 1341. It is an authority which is now expressly conferred by Section 13 as amended. This authority is subject to a certain defined procedure. In place of stating this procedure or reviewing the cases in any detailed way, it may suffice to quote from an important so-called Section 13 decision, wherein the Commission itself defined the procedural requirements under Section 13, namely, *State Corporation Commission of Virginia* v. *Aberdeen & Rockfish R. R. Co., et al.,* 136 I. C. C. 173, at page 180: (The italics are ours.)

> "We pass to the point which the interveners make with respect to the reasonableness of the rates in issue. Where the issue is under Section 3 and only interstate rates are involved, we can make an order requiring the removal of undue prejudice without regard to the level of the rates. If in complying with such an order the carriers transgress section 1, the rates so filed can be suspended and dealt with accordingly. *Where the issue is between intrastate and interstate rates,* however, and undue preference of intrastate shippers or commerce and undue prejudice to interstate shippers or commerce are shown, *it is necessary in the first instance to determine whether or not the offense is caused by the intrastate or the interstate rates. Plainly we cannot require intrastate rates to be raised above a maximum reasonable level* in order to cure a disparity with interstate rates, and where the intrastate rates have been fixed, as they have been here, by the order of a State commission, they cannot be increased by the

carriers without an order from us. This situation is recognized in paragraph (4) of Section 13, which provides that where we find that any rate made or imposed by authority of any State *causes* any undue prejudice to persons or localities engaged in interstate commerce or any unjust discrimination against such commerce, we shall prescribe the rate 'or the maximum or minimum, or maximum and minimum, thereafter to be charged,' for the purpose of removing such prejudice or discrimination. *Obviously such an order cannot be made without consideration of the reasonableness of the rates in issue.*"

In that case the complainant had withdrawn its averments of unreasonableness under Section 1 so far as the interstate rates were concerned. The Commission then went on to say:

"It appears that the provisions of paragraph (4) above mentioned empower us to consider the level of the rates, regardless of any specific allegation, whenever an issue of undue preference and prejudice or unjust discrimination as between intrastate and interstate rates is raised. But by reason of the withdrawal of the allegation under Section 1, the interveners did not here present evidence with respect to the level of the rates, and to that extent at least the consideration of that issue in the record is not well balanced nor complete."

The requirements of Section 13 of the Act as thus defined by the Commission were not met in its investigation in the present case and objections to that effect were repeatedly urged during the course of the hearing before the presiding Examiner, the objections were overruled and exceptions were noted. The language of paragraph (3) of Section 13 of the Act, which we believe is not merely permissive but mandatory, contemplating cooperation with the state authorities, was not complied with by the Commission. Under the restrictive terms of the order of June 4, 1928, reopening the cases for further consideration, and under the Examiner's limitation of the scope of the evidence received at the hearing, the

other requirements of paragraph 4 of Section 13 have not been fulfilled.

The point we urge is that when the question of the proper level of the rates and what would be reasonable rates for the transportation of these materials in the future was expressly excluded from consideration and evidence relating thereto was ruled out, a jurisdictional bar was raised to the entry of any order under Sections 13 and 15 of the Act.

The Commission was here dealing with rates for the future rather than with the past. Section 13 of the Act requires a full hearing; and such hearing has not been had when any party to the proceeding has been denied the right of introducing any testimony on an important issue and of material facts that should have a bearing on the decisions to be entered.

That the Commission did so limit the hearing is evidenced by the language of the order of June 4, 1928, reopening the case (R. 240), from which we quote as follows, *italics* partly ours:

> "*It appearing,* that under date of January 21, 1927, the Commission issued a report and order in the above-entitled proceedings and in No. 17517 *prescribed a reasonable basis of rates* and minimum weights for the interstate transportation of sand, gravel (washed or unwashed) clay gravel, crushed stone, and slag, in straight or mixed carloads, *between points in the State of Georgia, and between points in the State of Georgia and points in other states in Southern territory,* except Florida, and that the said reasonable basis of rates and minimum weights was also prescribed in No. 17763 for the interstate transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, *from Montgomery, Ala., and Chattanooga, Tenn., to destinations* in Georgia;"

While the foregoing language recites that the Commission had prescribed a reasonable basis of rates, the mere assertion of a fact does not make that fact true or the

entire truth. The order theretofore entered was not by its terms the fixation of the future level of the rates in the manner and form necessary under Section 13 of the Act. It simply fixed the *maximum* level of the interstate rates by naming a scale to govern, *according to the shortest physical lines of railroad.* The Commission did not consider the reasonable absolute rates, to govern the actual routes of transportation.

The order of reopening under which the further proceedings were had further provided:

> "*It is ordered,* That No. 17517 be, and it is hereby, reopened for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Commission to be maintained by said respondent railroads on intrastate shipments of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in relation to the interstate rates and minimum weights prescribed as aforesaid causes, or will cause, any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce."

An order of the Commission is not valid unless entered after full hearing and due investigation. Such full hearing has not been had, (a) because the reasonableness of the interstate rates and of the proposed intrastate rates was held not to be in issue and material evidence with respect thereto was excluded, and (b) because there is a most serious lack of any evidence dealing with the actual transportation conditions affecting the respective interstate and intrastate movements, other than the short-line distances.

It will be remembered the burden of proof is upon the carriers, under par. (7) of Sec. 15, inasmuch as the rates were proposed to be advanced herein.

VIII.

The District Court erred in not exercising its authority to set aside the Commission's orders.

The appellants submit that the District Court had jurisdiction to enter a decree setting aside the Commission's orders here assailed; that the District Court should have exercised that authority on the record made; that its failure to set aside the Commission's orders constitutes error and rests on erroneous conclusions; and that the reasons stated by the court below for denying relief are not sufficient and sound reasons.

It is certainly well settled under the decisions of this Court that the District Courts have authority to enjoin and set aside orders of the Commission which are beyond its jurisdiction, or void, on grounds which do not call for the substitution by the court of its judgment for the administrative judgment and discretion of the Commission.

It is fundamental that no order of the Commission can stand unless its conclusions and findings are supported by the evidence. *See Florida East Coast Ry. Co.* v. *U. S.*, 234 U. S. 167, 58 L. Ed. 1267; *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 57 L. Ed. 431; and *P. & R. R. Co.* v. *U. S.*, 240 U. S. 334, 60 L. Ed. 675.

Furthermore, it is to be particularly emphasized that the courts will always enjoin an order of the Interstate Commerce Commission where, although apparently in due form and within the Commission's statutory powers, nevertheless such order, as a matter of substance, shows an arbitrary exercise of power. *Southern Pacific* v. *I. C. C.*, 219 U. S. 433, 55 L. Ed. 283; *Tap Line Cases*, 234 U. S. 1, 58 L. Ed. 1185.

It was necessary, of course, in order to establish the contentions of our bill of complaint to tender all the evidence before the Commission in order to show that there was no substantial evidence before the Commission on certain essential phases of the case. This was done and the court has before it all of the testimony and exhibits which the Commission could have considered in the decision covered by the reports and orders here under attack.

We do not ask the court to weigh the evidence and decide whether the preponderance of the evidence is in support of the orders or against the orders of the Commission. We say there was no evidence of substantial character upon which the Commission properly could find that the intrastate rates were, in fact, unduly preferential to state commerce, and unjustly prejudicial against and burdensome upon interstate commerce. Under such circumstances, it devolves upon those who assert the validity of the Commission's order to point to that evidence upon which the decision is thought to be founded.

Nor do we ask the court to substitute its judgment and discretion for the administrative judgment and discretion of the Commission in the decision of questions within the Commission's jurisdiction and which were before it in the proceedings under review.

Counsel for the Commission customarily assert in the argument of cases brought to enjoin its orders, that the courts may not properly set aside an order of the Commission if there is a scintilla of evidence to support the order. It is probably the law that a record need only contain some substantial evidence to support the Commission's decision, in an ordinary case involving simply the exercise of its jurisdiction over purely interstate transportation. But we do not believe that is the law

when there is called in question the validity of rates made or imposed by authority of a state and where the effect of the Commission's decision is to set aside a prior, and in itself valid, order of a state regulatory body.

Under the constitution of the United States, the regulation of domestic commerce within the several states, and in particular the regulation of state railroad rates, is a matter within the control of the states and with which the Federal Government has no original or primary power to deal. When any act of a sovereign state dealing with its domestic commerce is called in question, such as a statute enacted by the Legislature or an order of the state commission fixing intrastate rates, the Federal judicial, legislative and executive departments must give full faith and credit to such acts of the state and not lightly interfere with them or set them aside except upon a clear, plain, and unmistakable showing of infringement of the superior rights of the United States, such as a clear and unquestionable discrimination against interstate commerce or a clear and unmistakable burden thereon. *Illinois Central Railroad Co.* v. *Public Utilities Commission of Illinois,* 245 U. S. 493, 510, 62 L. Ed. 425, 438; *American Express Co.* v. *South Dakota,* 244 U. S. 617, 625, 61 L. Ed. 1352, 1358; *Arkansas Railroad Commission* v. *C. R. I. & P. R. R. Co.,* 274 U. S. 597, 603, 71 L. Ed. 1224, 1226.

We would not state our understanding of these matters at this time, were it not for the position taken by the representatives of the interstate shippers and counsel and witnesses for the carriers before the Commission and for the nature of the Commission's order itself, all of which seem to indicate the impression that any difference between state and interstate rates should immediately prompt the Commission to enter an order

setting aside the state basis and substituting the interstate basis or formula; that the Commission needs only the opportunity or invitation to enter an order substituting its interstate schedules for a different basis of state rates; and that the burden of proof to justify any difference between rates in effect within a state and those theretofore prescribed by the Commission as maximum for interstate application, rests upon the state regulatory body and upon the shippers whose traffic moves under the state rates. That is not our conception of the law and if Sec. 13 of the Act were amended so to provide, we submit such amendment would be unconstitutional. *Minnesota Rate Case, Simpson* v. *Shepard,* 230 U. S. 352, 57 L. Ed. 1511; *Smyth* v. *Ames,* 169 U. S. 466, 42 L. Ed. 819; *Houston, East & West Texas Railway Co.* v. *United States,* 234 U. S. 342, 58 L. Ed. 1341.

In asking the court to enjoin the Commission's order, we take the position that there must be a certainty of showing before the Commission that there was a substantial preference of intrastate traffic and a substantial discrimination against or burden upon interstate traffic in respect of the rates actually charged over the actual routes of movement and for the transportation actually performed under the respective rates.

The appellants respectfully submit that for all of the reasons suggested on previous pages of this argument the District Court should have applied its jurisdiction and granted affirmative relief, by setting aside the orders of the Commission as erroneous, not based on essential findings and with no substantial evidence to support the erroneous findings. The failure of the court to set aside the orders of the Commission and the refusal to enter the interlocutory injunction and a permanent injunction constitute reversible error, under the several assignments of error by appellants.

We cannot accept as sound the reasons stated by the District Court in its two opinions for dismissing the bills and for upholding the validity of the Commission's order. Many of the statements made by the court below are answered by our statements on previous pages of this brief. It may be well, however, to state our understanding of what the court held and wherein that holding seems to us to be fundamentally erroneous.

The final opinion of the court below, 42 Fed. (2d) 467, opens with a reference to the effect that a preliminary injunction had been refused in the previous opinion; that subsequently a hearing had been had, and the record of the proceedings before the Commission was offered in evidence before the court. This evidence led the court to no different conclusion and it adhered to what had been said in the previous opinion.

We would not wish to show any lack of respect for the decision of the three-judge District Court; yet as a measure of the consideration which the court gave to the evidence, we are compelled to point out that the case was decided the day after it was heard and argued. In other words, the appellants filed with the court the voluminous transcript of testimony (2,219 typewritten pages) before the Commission and 346 numbered exhibits (R. 182) and argued the case forthwith, for a part of a single day's session, on June 23, 1930. The following day the court issued its order dismissing the bill. (R. 172.) This was subject, it is true, to an opinion to be filed later and which was filed under date of July 5, 1930. (R. 168.) But the order was signed by the three judges self-evidently without any opportunity to give the record sufficient study to determine whether it contained evidence on the very same points of deficiency to which we have herein directed this court's attention. The

opinion, filed two weeks later, was by a single judge. (R. 168.)

The court referred to its previous holding that both maximum and minimum rates were fixed by the Commission's order of December 9, 1929. The maximum so fixed was identical with that previously fixed for interstate shipments and was a mileage scale, and this scale was higher for joint-line than for single-line hauls and under it the court said the carriers had established a system of interstate rates which the Commission then prescribed as the intrastate minimum. These interstate rates were embraced in several tariffs filed with the Commission and in evidence before the court and consisted of hundreds of point-to-point rates between named places in Georgia and in other states. The court said that it was asserted, and assumed by it to be true, that the vast majority of these point-to-point rates are mere applications of the scale, joint or single-line, as the case might be, to the distances involved. (The court here completely missed the point that the rate-making distances were over theoretical routes, not reflecting the measure of service performed over routes of actual movement.) The opinion then goes on to point out that where there are several routes between two points the Commission had directed that all routes not circuitous beyond a fixed per cent might take the same rate and the lowest over any route, joint or single-line, by which carload freight might be moved without transfer of lading. Departures from the long-and-short-haul rule were permitted. After discussion of the contentions made as to this basis the court said:

> "The evident purpose of the Commission was to equalize rates in interstate and intrastate commerce, distance considered, under similar circumstances and conditions."

The court went on to say:

> "We see nothing to hinder the Georgia State Commission from causing the establishment of rates which will follow the same principles that were applied in fixing interstate rates where competition justifies departure from the maximum scale."

The competition here referred to by the court is simply carrier competition. The Georgia Commission may permit, or perhaps may cause railroads in one route between two points, to maintain a rate of the same amount that another railroad or railroads charge between the same point, at least so long as it avoids violation of the short-haul principle in paragraph (4) of section 15 of the Act. (278 U. S. 269.) But any order of the Georgia Commission will be null and void if it has the effect of requiring any carrier to charge from a given point of origin to a given destination in Georgia a rate equal in amount to what other railroads are charging for the same distance from another point of origin to the same destination. This is no less carrier competition, in the true sense of that term than is the case of one carrier meeting the rate of another carrier between the same identical points; but as it also involves the item of market competition, or would enable one producer to compete against another, or a given consumer to enjoy the privilege of having two sources of supply available at equal rates, for equal distances, the Interstate Commerce Commission is here apparently claiming a distinction.

The District Court further said in its opinion:

> "Had the Commission prescribed a fixed intrastate scale, the state Commission, or the carriers, would have been bound to establish it forthwith. When instead a maximum and minimum are fixed, as is allowed by Section 13 (4) the fixing of the exact rates *within these limits* is to be done by the state Commission on its usual procedure."

The Georgia Commission is unable to understand, however, how it may exercise its jurisdiction over state rates in view of the Commission's outstanding order in this case. Appellants particularly point attention to the fact that the schedules in evidence before the court fail to reveal any understanding by the carriers of a distinction between the maximum basis and the minimum basis as referred to by the court since they publish only the Commission's scales for application on intrastate commerce, rather than specific point-to-point rates as heretofore published for interstate shipments. (See Appendix 3 hereto.) Even on the court's interpretation of the effect of the order, we cannot understand why the schedules filed by the carriers were not enjoined, because they were contrary to the Georgia Commission's order under the state statutes, and not required by the terms of the Federal order here assailed.

The other features of the District Court's decision we have attempted to meet sufficiently by the affirmative argument presented in preceding sections hereof.

IX.

The District Court erred in not enjoining carriers from applying their schedules of new state rates in Georgia filed in ostensible compliance with the Commission's order.

The Commission's order of December 9, 1929, here under review, was by its terms effective on March 3, 1930. In ostensible compliance therewith, the various defendant carriers filed with the secretary of the Interstate Commerce Commission new schedules (bearing Interstate Commerce Commission numbers), and also sent to the Georgia Public Service Commission the same new schedules, substituting for application on intrastate traffic of

sand and gravel within the State of Georgia the full Commission scales, joint-line, single-line and weak-line, for those theretofore applied under the Georgia Commission's order. The schedules so tendered to the Georgia Commission were rejected as void and returned to the agent of the carriers immediately.

The filing of schedules with the Interstate Commerce Commission does not provide legally for intrastate rates in Georgia; or at least there is no provision either in the Georgia statutes or in the Interstate Commerce Act for establishing in that manner the rates to be applied within the state. The Commission's order of December 9, 1929, required the carriers to maintain certain minimum and maximum bases of rates in the future, but it did not specify in what manner the new rates should be established or how they are to be evidenced.

The new schedules do not name the specific rates, or show the amounts to be charged from named originating points to named destinations, but simply provide for the application on intrastate traffic in Georgia of the aforesaid mileage scales.

On the other hand, the interstate schedules of the defendants specify in cents per ton the rates to be charged from the various points of origin, which are named, to the specific destinations in Georgia, Alabama, the Carolinas, Tennessee, etc. These specific rates are not the full measure of the Commission's scales applied to the distances for which the shipments are transported, over actual routes of movement.

It is self evident that when the Commission prescribed for intrastate application in Georgia, (a) a maximum basis, *i. e.*, the scales, and (b) a minimum basis, *i. e.*, no lower, "distance considered," than applied on interstate traffic, it was not simply specifying one basis and that a

maximum-minimum, or *absolute*, basis of rates. When, therefore, the carriers published merely their full scale rates, effective March 3, 1929, on intrastate traffic in Georgia they published the full maximum basis as absolute rates and quite obviously went farther than the decision required as minimum regardless of all uncertainty as to just what minimum the Commission really prescribed. In so doing they exceeded also the rates which the Georgia Commission had prescribed as maximum rates for Georgia.

The schedules thus established for intrastate traffic in ostensible compliance with the Commission's order, as the carriers construed it, were received in evidence by the District Court and certified to this court as an original exhibit under the stipulation of counsel by which they may be fully considered and availed of in the argument and decision of the case without having been incorporated in the printed record. (R. 183.)

We have contended that the order of the Interstate Commerce Commission is void. If so, it affords no excuse or justification for the carriers' violation of the terms of the valid order of the Georgia Commission, fixing maximum rates in Georgia.

On the other hand, if the Commission's order were sustained as valid, it would afford justification to the carriers for violating the terms of the Georgia Commission's orders only to the extent that the interstate order clearly and definitely requires such violation and not to any further, or permissive, extent.

We contended before the District Court that under any interpretation of the Commission's order, it does not expressly require the carriers to establish or to maintain rates as high as they have published, *in innumerable instances*, and are now charging in Georgia. These higher

charges are in violation of the terms of the Georgia Commission's prior order, which is clearly valid to the extent that it has not been invalidated definitely by lawful action of the Federal government.

The remedy of the Georgia Commission in such a situation, ordinarily, would be by action to enforce the terms of its order, by injunction, or to apply the statutory penalties. But in this case, any such action would obviously involve the question of validity and of interpretation of the Commission's order.

The District Court, having full jurisdiction of the general subject-matter and of the parties, properly had the duty of entering any order necessary to a proper final disposition of the rights of the parties.

In order that a full, complete, effectual, and final decree adjusting the rights and equities of all parties in interest may be entered and enforced, a court of equity, once having assumed jurisdiction of a cause on any equitable ground will reach out and draw into its consideration and determination the entire subject-matter, bringing before it all the parties interested therein, and will retain such jurisdiction until all matters involved in the litigation between the parties or growing out of and connected with the subject-matter of the suit are finally disposed of. *Russell* v. *Clark*, 7 Cranch 69, 3 U. S. (L. Ed.) 271; *Hepburn* v. *Dunlop*, 1 Wheat. 179, 4 U. S. (L. Ed.) 65; *Leighton* v. *Young*, 52 Fed. 439, 3 C. C. A. 176, 18 L. R. A. 266; *Big Six Development Co.* v. *Mitchell*, 138 Fed. 279, 70 C. C. A. 569, 1 L. R. A. (N. S.) 332.

We therefore requested the District Court to enjoin the carriers from maintaining their schedules which purported to apply on this traffic intrastate in Georgia, rates which are in violation of the valid order of the Georgia Commission.

CONCLUSION.

That the Commission has the power to enter an order setting aside intrastate rates in Georgia on sand, gravel, crushed stone, etc., cannot be questioned, if it finds that the existing rates are unduly burdensome upon interstate commerce or unjustly preferential to intrastate shippers and traffic and unduly prejudicial against interstate shippers and traffic, in a real sense and to a substantial degree, *provided* there is substantial evidence to support such findings.

The appellants contend, however, that the Commission has not made the requisite findings to support an order setting aside the state rates in Georgia and that findings of the nature necessary to support such an order would not in turn be supported by substantial evidence in the record.

The Commission's conclusions are broad and sweeping and lack that definiteness and certainty, and reasonable degree of particularity which the appellants submit should be required in any case where the Federal Commission seeks to invade the field of regulation of state commerce which is inherently the right of the states.

Under cloak of the Commission's order, the railroads have established schedules of rates for intrastate transportation of the materials in question in Georgia, which are in violation of the terms of a valid order of the Georgia Public Service Commission, the regulatory body administering the state's functions as to transportation charges in Georgia. The Georgia Commission is powerless, in a practical sense, to enforce its order or interfere with the charging of these unlawful rates by the railroads because they rely upon the Commission's order as legalizing the schedules in question. Any suit to annul the schedules undoubtedly would involve the interpretation

and validity of the Interstate Commerce Commission's order.

The problems presented to the Commission in these rate cases are complex and difficult. Every presumption ordinarily should be indulged in favor of the Commission's conclusions, where questions of rate judgment are involved. The Georgia Commission would not like to see the courts substituting their judgment in rate matters for the judgment of the Commission. But where the Commission acts arbitrarily, departs from principles which the Commission itself has laid down as sound transportation law or principles of rate making, and does so without substantial evidence to justify its departures in principle or to support the conclusions arrived at, we submit such an opinion and order are not entitled to acceptance and approval by the courts. We particularly urge this in a case which fundamentally presents an instance of the Federal government imposing its superior power and authority in derogation of the right of the state to regulate the commerce within its own borders.

The appellants submit that upon the entire record the court below should have entered its decree and order granting the relief prayed for, setting aside the Commission's reports and orders and enjoining the unlawful schedules of state rates established by the railroads in Georgia; and that the decree of the court dismissing the bill is erroneous and should be reversed.

Respectfully submitted,

LUTHER M. WALTER,
NUEL D. BELNAP,
JOHN S. BURCHMORE,
Attorneys for Georgia Public Service Commission, et al., Appellants.

Chicago, March 28, 1931.

APPENDIX I.

THE STATUTES.

The Interstate Commerce Act.

(41 Stat. L. 474; Title 49 U. S. C. Chap. 1.)

Sec. 1. *(As amended June 29, 1906, April 13, 1908, June 18, 1910, February 17, 1917, March 2, 1917, May 29, 1917, August 10, 1917, and February 28, 1920.)*

(1) That the provisions of this Act shall apply to common carriers engaged in—

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless;—from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only in so far as such transportation or transmission takes place within the United States.

(2) The provisions of this Act shall also apply to such transportation of passengers and property and transmission of intelligence, but only in so far as such transportation or transmission takes place within the United States, but shall not apply—

(a) To the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State and not shipped to or from a foreign country from or to any place in the United States as aforesaid;

* * * * *

(5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful;

* * * * *

Sec. 2. (*As amended February 28, 1920.*) (1.) That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Sec. 3, (1). (*As amended February 28, 1920.*) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Sec. 4, (1). (*As amended June 18, 1910, and February 28, 1920*) That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this Act, but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided,* That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section; but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and if a circui-

tous rail line or route is, because of such circuity, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points; and no such authorization shall be granted on account of merely potential water competition not actually in existence:

Sec. 13, (1). (*As amended June 18, 1910, and February 28, 1920*) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship

between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Sec. 14, (1). (*Amended March 2, 1889, June 29, 1906, and February 28, 1920.*) That whenever an investigation shall be made by said Commission, it shall be its

duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

Sec. 15, (1). (*As amended June 29, 1906, June 18, 1910, and February 28, 1920.*) That whenever, after full hearing, upon a complaint made as provided in Section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Com-

mission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

* * * * * *

Sec. 15. (4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line), require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established: *Provided*, That in time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest.

Sec. 15, (7). * * *

At any hearing involving a rate, fare, or charge increased after January 1, 1910, or of a rate, fare, or charge sought to be increased after the passage of this

Act, the burden of proof to show that the increased rate, fare, or charge, or proposed increased rate, fare, or charge, is just and reasonable shall be upon the carrier; and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

APPENDIX II.

ILLUSTRATIONS OF INDEFINITE TERMS OF COMMISSION'S ORDER.

The following are referred to on page 50 of this brief, as specific examples which were presented to the Commission,* of indefiniteness and uncertainty as to the minimum rates intended to be prescribed intrastate in Georgia, by the order of December 9, 1929.

With respect to joint hauls: From Anniston, Alabama, to Atlanta, Georgia, the Louisville & Nashville Railroad in connection with the Seaboard Air Line maintain a through route over which traffic moves freely, the distance being 115 miles. The joint-line scale for that distance is 125 cents per net ton, under the appendix to the order of December 9, 1929, but the said railroads maintain a rate of 110 cents for said interstate transportation. Does the order of December 9, 1929, require that the Louisville & Nashville and Seaboard Air Line, for intrastate transportation over joint-line routes within Georgia, shall charge more than their said interstate rate of 110 cents for said distance, or, in other words, does it require that they shall charge within Georgia the full rate of 125 cents prescribed *as maximum* for that distance in the appendix to the order of December 9, 1929? Or, what rates are said respondents required by said order to maintain for said distance in Georgia?

*By formal petition filed January 10, 1930, by Georgia Public Service Commission, (R. 118). It was summarily denied February 3, 1930, (R. 249.) The petition is not here quoted verbatim.

For instance, from Elberton, Georgia, on the Seaboard Air Line, to Round Oak, Georgia, a joint-line distance of 112 miles, the present rate is 110 cents, being the Georgia Commission maximum rate for that distance under its order of March 13, 1928. Are these carriers to be required to charge 125 cents between those points because that is the scale rate for that distance under the appendix attached to the order of December 9, 1929, notwithstanding the joint rate of 110 cents now in effect for that distance from Anniston to Atlanta and notwithstanding the order of the Georgia Commission?

What are joint-hauls? The Georgia, Southern & Florida Railroad is generally regarded as a part of the Southern Railway system. The Georgia Public Service Commission, however, is under restraint of a decision of the United States District Court for the Northern District of Georgia, preventing the enforcement as to intrastate traffic, upon the Georgia Southern & Florida Railroad, of a single line basis of rates with the Southern Railway. The decree was entered May 8, 1923, on the petition of the carrier. *Georgia, Southern & Florida Railway Company, et al.* v. *Georgia Public Service Commission, et al.*, 289 Fed. Rep. 878. The record herein shows, however, that the Southern Railway is voluntarily maintaining interstate rates on sand, gravel, etc., from Alabama points on its lines to destinations on the Georgia, Southern & Florida Railroad under the Commission's single line scale.* What rates are to be established and maintained under the Commission's order of December 9, 1929, for the intrastate movement of these materials in Georgia between points on the Georgia,

*The record in these proceedings does not contain a showing of facts as to whether, and from what point of view, the Georgia Southern & Florida Railroad may be considered or ought to be treated as one line with the Southern Railway for purposes of applying sand and gravel rates under this Commission's decision herein.

Southern & Florida Railroad and points on the Southern Railway?

As a specific illustration, from Stockbridge, Georgia, to Cordele, Georgia, the distance is 134 miles via Southern Railway, in connection with Georgia, Southern & Florida. The present rate is 120 cents per net ton, which is the maximum rate under the Georgia Commission's order for that distance. This is also the single line rate under the appendix to the Commission's order of December 9, 1929. But the joint line rate for that distance under said order is 135 cents per net ton. Is this a joint-line movement under the Commission's *minimum* rate findings? Does the Commission's order supersede the decree of the court?

Short and weak lines: The decision of December 9, 1929, refers on sheet 6 to the arbitraries over the so-called standard line scales authorized to so-called weak lines. The appendix to the order of December 9, 1929, provides in Table B for an arbitrary to the short lines or weak lines of 25 cents per net ton. One of the so-called weak lines or short lines in Georgia named in the Commission's original decision (122 I. C. C., at page 175), is the Georgia & Florida Railroad. Another is the Wrightsville & Tennille Railroad. Neither of these railroads is now charging in its interstate rates any arbitrary over and above the so-called standard line basis. Does the report require that they shall do so as to intrastate movements?

Specifically, take the Georgia & Florida Railroad: The published rate from Birmingham, Alabama, to stations on this railroad, Cottle, Georgia, to Sparks, Georgia, inclusive, is 175 cents per ton for distances ranging from 384 miles to 392 miles. The maximum rate authorized by the scale printed as appendix to the order of December

9, 1929, for these distances, is 215 cents per ton, including the weak line arbitrary. What rates or what basis of rates shall be charged intrastate in Georgia to and from points on this and other so-called relief lines?

On sheet 14 of the tentative report, it is stated that the findings and order will automatically adjust themselves to situations where a short or weak line does or does not assess the arbitrary. The appellants inquired as to the definition of this *automatic adjustment*.

As to single-line rates: From Stockbridge, Georgia, to Brunswick, Georgia, an intrastate route over the Southern Railway, the single-line distance is 256 miles which is the shortest rail distance between those two points. The rate actually in force over the Southern Railway as of December 9, 1929, was 160 cents per net ton, which is the maximum rate prescribed in the Georgia Commission's order of March 13, 1928. The single-line rate for that distance shown in the appendix to the Commission's order of December 9, 1929, is 150 cents per net ton. Does the report require or contemplate that the Southern Railway must *reduce* said rate for said intrastate transportation? If so, by what authority?

Again, the interstate rate over the Atlantic Coast Line Railroad from Montgomery, Alabama to Camilla, Georgia, a one-line haul of 244 miles, is 140 cents per net ton. That is the shortest *single-line* route from Montgomery to Camilla; and there is a considerable movement over that route under the 140 cent rate.* The rate for that distance under the appendix to the Commission's order of December 9, 1929, is 150 cents per net ton. On the other hand, within Georgia, over the Atlantic

*There was a somewhat shorter joint-line route, subject to a rate of 140 cents. But it is made up of the Central of Georgia, Seaboard and Atlantic Coast Line, and would short haul the Atlantic Coast Line, contrary to the principle of the Subiaco case, 278 U. S. 269.

Coast Line Railroad from Saffold, Georgia, to Fleming, Georgia, the actual distance is 244 miles, (being also the short-line), and the present rate is 150 cents per net ton which is the maximum rate for that distance fixed by the Georgia Commission's aforesaid order of March 13, 1928. If, however, the Atlantic Coast Line Railroad is to comply with our interpretation of the order of December 9, 1929, is it to *reduce* its *intrastate* rate from Saffold to Fleming, 244 miles, to 140 cents per ton, because that is the rate which it is contemporaneously applying interstate for its single line haul of 244 miles from Montgomery to Albany? If so, by what authority is such reduction in said Georgia intrastate rate? If not, why should the state rate *exceed* the interstate rate of the same railroad for the same distance?

The foregoing illustrations deal with single-line rates, *maintained by the same carrier*, state and interstate. If one railroad charges a certain rate for a certain distance for interstate transportation, does the order of December 9, 1929, contemplate that *other* railroads shall maintain a corresponding rate for the same distances on their intrastate movements in Georgia, or is each respondent railroad simply required to maintain intrastate the same basis which it maintains interstate?

APPENDIX III.

Illustrative Rate Charts.

The following seven charts, depict various illustrations referred to in the argument, *supra*, of the application of the maximum and minimum requirements of the Commission's orders to particular railroad routes and from given points of origin to given destinations.

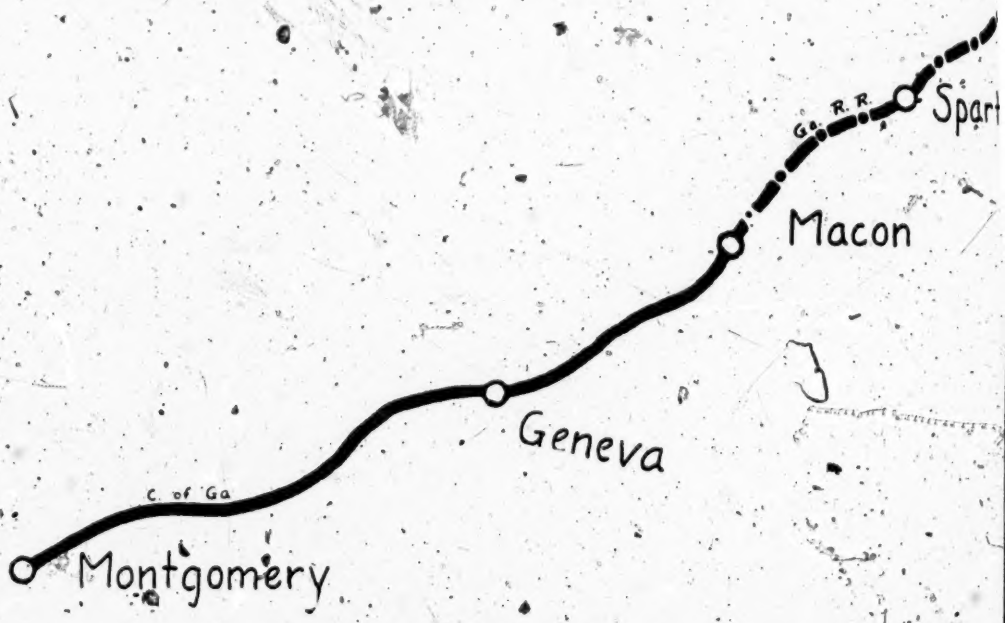
General Description of Tariffs.

Memorandum referred to in foregoing printed argument, *supra*, describing the terms of the railroad tariffs in evidence before the court, with illustrative reference to the situation pictured on chart B herein.

Montgomery, Alabama,—produces gravel and sand.

Sparta, Georgia,—produces crushed stone.

Geneva, Georgia,—an illustrative destination.



FROM SPARTA TO GENEVA.

Distance 125 miles via Georgia Railroad and Central of Georgia Railway. The rate was $1.10, being the maximum rate for that distance prescribed by the Georgia Commission. It has been increased by the carriers to $1.25 under the assailed order.

FROM MONTGOMERY TO GENEVA.

Distance also 125 miles, via Central of Georgia. The interstate rate is $1.10.

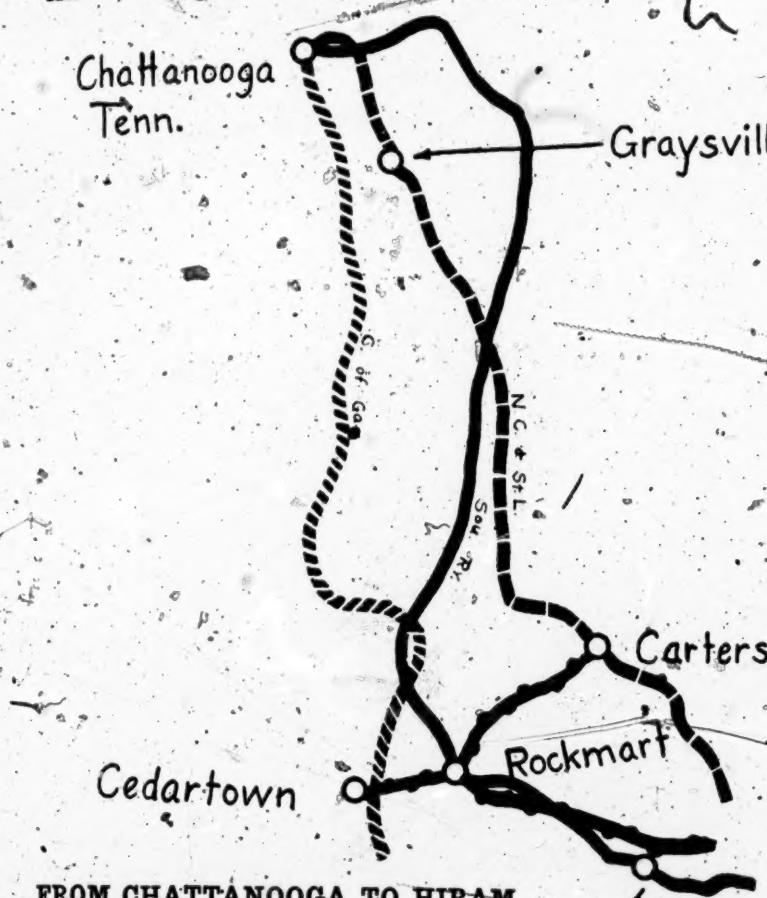
Note:

The class rates to Geneva are the same from Sparta and from Montgomery, under the Commission's **Southern Class Rate Case**; and the same rates apply from Sparta and Montgomery to Geneva on cement, fertilizer, brick, sugar, etc., under other orders of the Commission.

B

Chattanooga, Tennessee } both produce crushed stone.
Graysville, Georgia }

Hiram, Georgia,—an illustrative destination.



FROM CHATTANOOGA TO HIRAM.

The interstate rate is $1.10 and applies via three routes:

Via Southern Railway, distance 125 miles, for which the Commission's scale makes $1.10.

Via Central of Georgia to Cedartown, Seaboard Air Line beyond, 132 miles, for which the Commission's joint-line scale would make $1.35.

Via N., C. & St. L. Railway to Cartersville, Seaboard Air Line beyond, 135 miles, for which the Commission's joint-line scale would make $1.35.

FROM GRAYSVILLE TO HIRAM.

Distance 118 miles, via Cartersville. The maximum rate under the Georgia Commission's order was $1.10. The N., C. & St. L. and Seaboard have increased this rate to $1.25, because that is the I. C. C. joint-line scale rate for 118 miles.

Note:

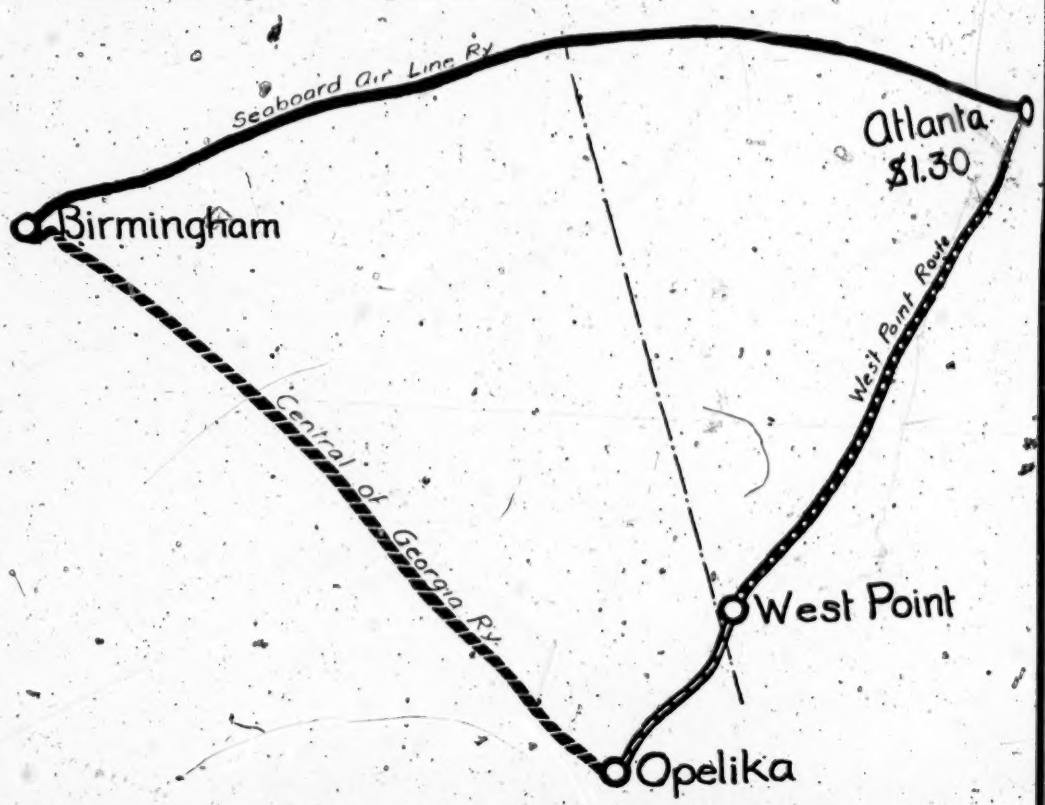
Carriers still maintain $1.10 from Chattanooga through Graysville to Hiram.

Under other orders of Commission, class rates and rates on brick, cement, fertilizer, sugar, etc., from Graysville are less than, or the same as, the rates from Chattanooga to Hiram.

C

Birmingham, Alabama—produces slag.

Atlanta, Georgia—an important destination.



FROM BIRMINGHAM TO ATLANTA.

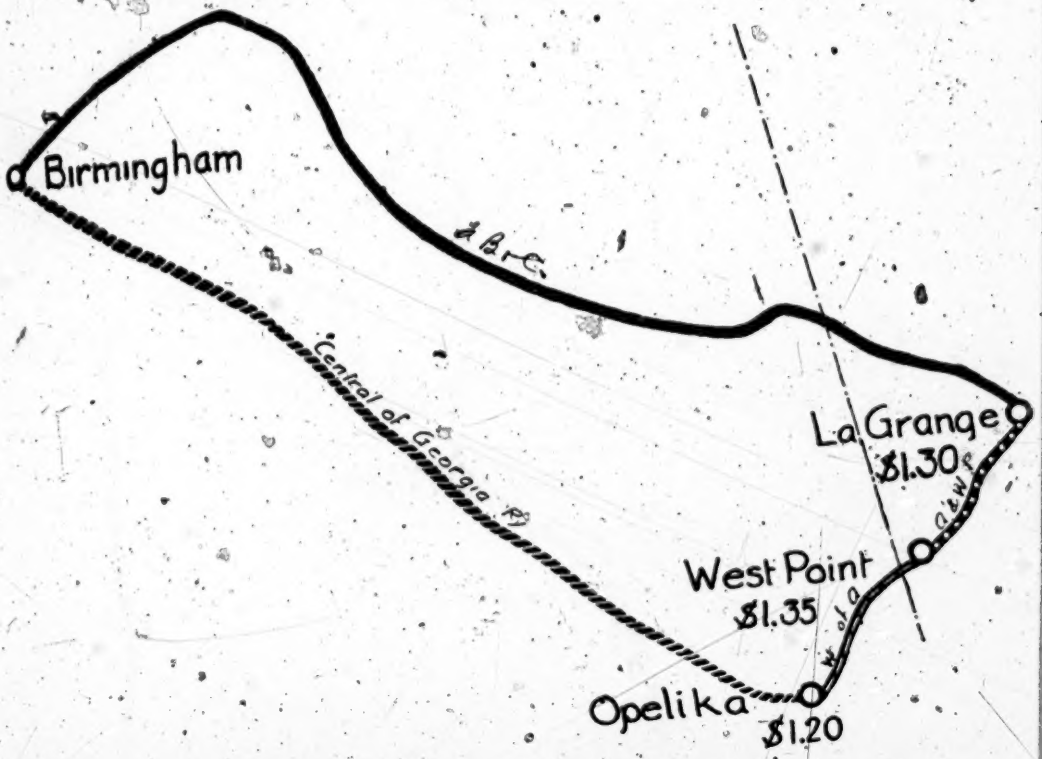
The Seaboard Air Line distance is 166 miles and the Commission's scale rate for that distance is $1.30.

The Central of Georgia is recognized as an important line from Birmingham via Opelika in connection with the Western of Alabama and Atlanta & West Point Railroads.

This route is 232 miles. The Commission's joint-line scale for this distance is $1.60. These carriers are charging $1.30 to Atlanta and $1.35 to West Point.

Birmingham, Alabama—produces slag.

LaGrange, Georgia—as an illustrative destination.



FROM BIRMINGHAM TO LA GRANGE.

The Atlanta, Birmingham & Coast Railroad is the **rate-making line,** 166 miles, (although not the shortest route), and charges $1.30, being the Commission's scale rate for that distance.

The Central of Georgia in connection with the Western of Alabama and Atlanta & West Point Railroads, is an important route from Birmingham via Opelika to LaGrange. The distance is 161 miles, (less than via the A., B & C), and the rate by this route is also $1.30. The Commission's so-called joint-line scale rate for 161 miles is $1.40.

Note:

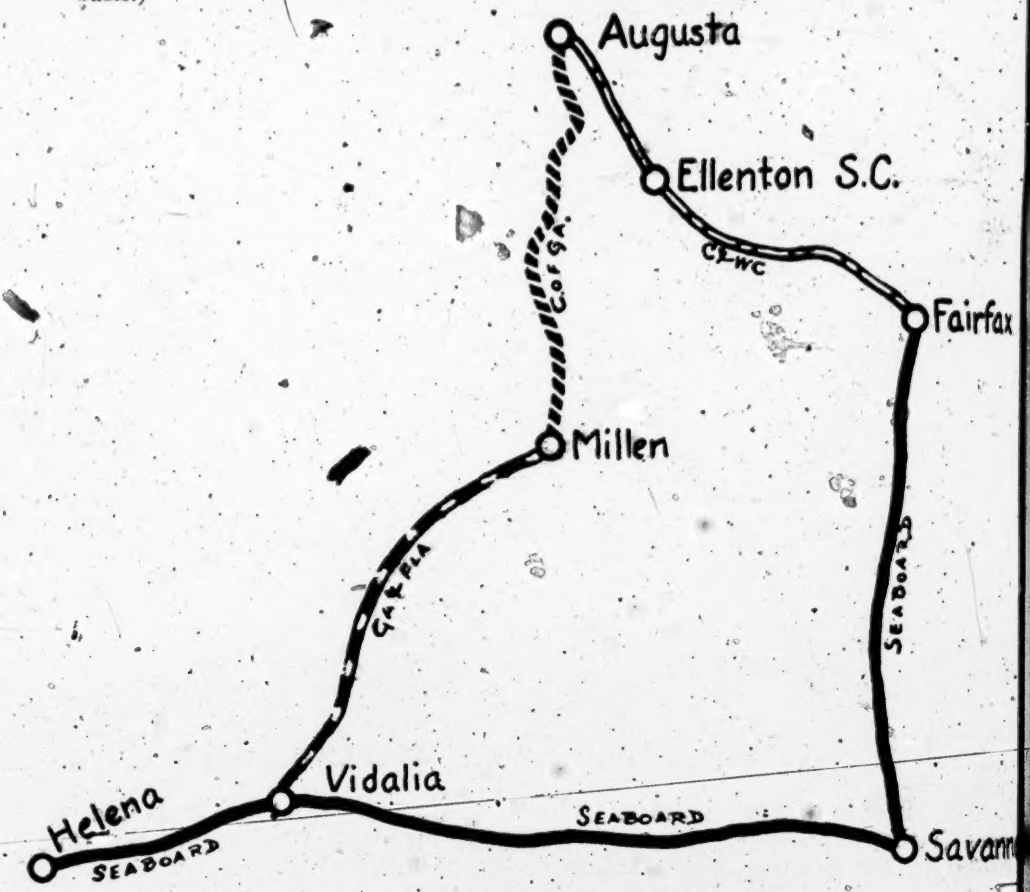
The Central of Georgia and Western of Alabama are charging $1.35 from Birmingham to West Point, intermediate to LaGrange.

Under other decisions of the Commission, the rates from Birmingham via Opelika to West Point, are the same as or less than the rates to LaGrange on cement, brick, fertilizer, sugar, etc., and this is true of the class rates.

Ellenton, South Carolina—produces gravel.

Helena, Georgia—a representative destination.

(The Georgia & Florida Railroad is named by the Commission as a short or weak line, taking the scale B basis, which is 25 cents per ton higher than the standard line basis.)



FROM ELLENTON TO HELENA.

The shortest route is via Charleston & Western Carolina Railroad to Augusta, Central of Georgia to Millen, Georgia & Florida (weak line) to Vidalia and Seaboard Air Line; distance 163 miles. The rate maintained over this route is $1.40. The Commission's maximum scale rate for this distance over such route is $1.65.

Over another route, of Charleston & Western Carolina, to Fairfax, Seaboard Air Line via Savannah and Vidalia, the through distance is 220 miles, for which the Commission's maximum rate is $1.50. These carriers are charging $1.40.

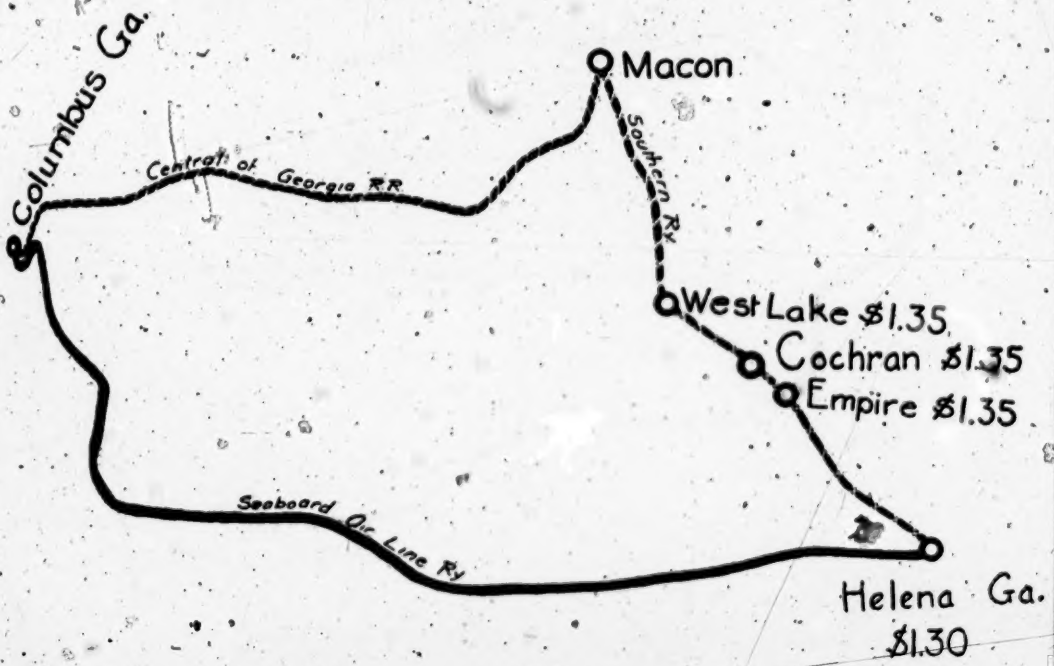
Note:

There is no competitive reason for the Georgia & Florida waiving the higher scale basis applicable under the Commission's order.

F

Columbus, Georgia—produces gravel and sand.

Helena, Georgia—a representative destination.



FROM COLUMBUS TO HELENA.

Seaboard Air Line intrastate route is 153 miles. The Georgia Commission order prescribed a maximum rate of $1.20, which the carriers have increased to $1.30, being the I. C. C. maximum scale rate for 153 miles.

Another intrastate route is composed of Central of Georgia to Macon, Southern Railway through West Lake, Cochran and Empire to Helena. The distance by this route is 176 miles. The Commission's joint-line scale for that distance is $1.45. But the carriers have raised the rate from Columbus to Helena only to $1.30 via this route, meeting the rate of the Seaboard Air Line.

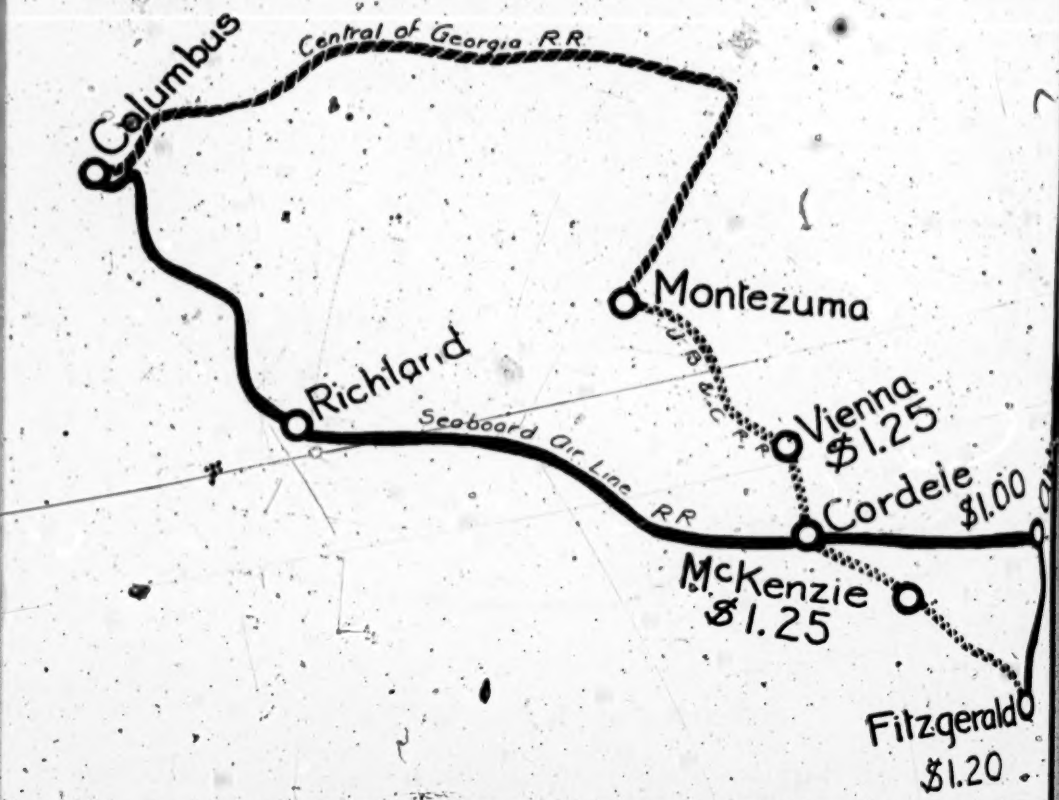
Note:

From Columbus to Empire, Cochran and West Lake, the Central of Georgia and Southern Railway have increased their rate, under cover of the Commission's order, from $1.00 and $1.20 to $1.35, being the Commission's joint-line scale for the distances by this route.

The Commission's order here creates long-and-short-haul violations.

Columbus, Georgia—produces gravel and sand.

Fitzgerald, McKenzie, Cordele and Vienna, Georgia—representative destinations.



FROM COLUMBUS TO FITZGERALD.

The Seaboard Air Line extends from Columbus through Cordele and Abbeville to Fitzgerald, 150 miles. The Georgia Commission's maximum rate for that distance was $1.20, and has not been changed under the I. C. C. order.

The Central of Georgia, in connection with the Atlanta, Birmingham & Coast, furnishes a route from Columbus, (through Vienna, Cordele and McKenzie) distance 132 miles to Fitzgerald, or shorter than via the Seaboard Air Line. The Commission's joint-line scale rate for this distance is $1.35, but these carriers have not raised their rates from Columbus to Fitzgerald or Cordele, maintaining the same rates, $1.20 and $1.00, as continued by the Seaboard Air Line.

FROM COLUMBUS TO McKENZIE AND VIENNA.

The Central of Georgia and the Atlanta, Birmingham & Coast have increased the rate from Columbus to Vienna and McKenzie, to $1.25, the full I. C. C. scale rates for these distances.

The Seaboard Air Line has also increased the rate from Columbus via Cordele to Vienna and McKenzie to $1.25.

The Commission order has here created long-and-short-haul violations

General Description of Interstate Tariff.

The interstate rates which were and are in effect, and from which the exhibits filed of record were made, were published in tariff issued by Agent J. H. Glenn as freight tariff No. 88-A, his I. C. C. No. A-655. This is in evidence before the court and is a thick tariff of which pages numbered 1 to 241 inclusive, is made up of tables of specific point to point rates, covering every originating station where these materials are actually produced to every destination of any importance in the southern states.

Besides these specific rates, which are named in cents per ton, without showing any reference to what the distances may be for which the rates apply, the tariff also contains on page 234 the Commission's interstate distance scales, with rules as to how those scales shall be applied. It states specifically at the top of page 234 that the scales govern only in the absence of specific rates on the preceding 241 pages of the tariff.

Item 55 at the top of page 58-A of this tariff, in effect provides that the rates in the tariff are subject only to the special routing instructions there shown. The substance of this restriction is that rates of certain amounts will not apply over routes which are longer than certain distances. In other words, and for illustration, the Commission's maximum scale rate for a joint line distance of 125 miles is 125 cents; and item 55 provides that a rate of 125 cents will not apply over a route of more than 212 miles between the point of origin and destination. There is no other routing restriction in the tariff, excepting some restrictions immaterial to our present statement which are found on pages 249 to 274 and which affect only the Atlantic Coast Line Railroad.

Publication of Rates, Chattanooga to Hiram.

In connection with the example shown on Chart B of this Appendix, p. xvii, of rates from Chattanooga to Hiram, Georgia, attention is directed to the following specific rates contained in the above tariff:

From Chattanooga to Hiram, Ga., 110 cents, page 203, line 70.

From Chattanooga to Cedartown, Ga., 100 cents, page 203, line 35.

Chattanooga to Rockmark, Ga., 110 cents, page 210, line 35.

Chattanooga to Ladds, Ga., 115 cents, page 143, line 97.

The foregoing rates apply over all of the routes shown on Chart B, including N. C. & St. L., to Cartersville, Seaboard Air Line to destination; and including Central of Georgia to Cedartown and Seaboard Air Line beyond. The distances and the above rates over these routes are as follows:

	From Chattanooga.		
To	Route	Miles	Rate
Hiram	Sou. Ry.	125	110
Hiram	N. C. & St. L.-S. A. L.	135	110
Hiram	C. of Ga.-S. A. L.	132	110
Cedartown	C. of Ga.	98	100
Rockmart	C. of Ga.-S. A. L.	111	110
Rockmart	N. C. & St. L.-S. A. L.	112	110
Rockmart	Sou. Ry.	103	110
Ladds	N. C. & St. L.-S. A. L.	93	115
Ladds	Sou. Ry.-S. A. L.	122	115

It will be observed that the rates from Chattanooga via Cartersville to Ladds, which is on the Seaboard Air Line

between Cartersville and Rockmart, violate the long and short haul prohibition in Section 4 of the Act, being higher than the rates to Rockmart, Cedartown, and Hiram, all of which apply through Ladds.

General Description of New Intrastate Tariff.

The new state rates in Georgia which are filed ostensibly in compliance with the Commission's decision, under review, are in supplement No. 8 to Agent J. H. Glenn's freight tariff No. 33-A, his I. C. C. number A-716, consisting of only four pages. This tariff and this supplement thereto are evidence before the court. In contrast with the interstate tariff, this supplement names no specific rates from point to point on sand and gravel, but simply names as the rates to govern traffic in Georgia the scales which the Interstate Commission prescribed as maximum for intersfate use in its original order and in its later order prescribed as maximum for state traffic. Consequently, this supplement names the maximum scale as the absolute rates. The manner in which this scale is applied within the state is different than the application given the interstate scale and is defined on page numbered 1 of the main tariff, I. C. C. No. A-716, to which supplement 8 is an addition:

Turning to page 1 of the main tariff the court will notice three things:

(a) There is no provision that the scale rates will be applied to the shortest mileages over which traffic can move without interchange of lading; and Mr. Price testified that such was not the rule in Georgia. (R. 775.)

(b) Item 10 provides in substance that when rates are established by one route between competitive points, the longer routes are authorized to meet that rate. This

is what the carriers refer to as similar to their interstate rule; but it is distinctly modified by the exception in item 15 on the same page.

(c) Item 15 provides routing instructions and states in substance that the rates between any two points apply via all available routes, *except as provided below.* Then comes the exception which is not found in the interstate tariff and which is very important, that rates between junction points, (which means competitive points) and local stations, (which means non-competitive points) will apply only via the railroad that serves the local point.

PUBLICATION OF RATES, GRAYSVILLE TO HIRAM.

The rates from Graysville, Georgia, via the N. C. & St. L. Railroad and Cartersville, to the same stations heretofore mentioned on Chart B, and which are now in effect, under Supplement 8 to I. C. C. A-716, are higher than the rates from Chattanooga, although for shorter distances of actual transportation, and are as follows:

	FROM GRAYSVILLE, GA.		
To	Route	Miles	Rate
Hiram	N. C. & St. L.-S. A. L.	118	125
Rockmart	N. C. & St. L.-S. A. L.	96	115
Ladds	N. C. & St. L.-S. A. L.	76	105
Cedartown	N. C. & St. L.-S. A. L.	109	125

It will be noticed that from Chattanooga through Graysville, the N. C. & St. L. is charging only 110 cents to Hiram and Rockmart, 115 cents to Ladds and 100 cents to Cedartown.

Before the Commission's order took effect, the carriers were charging under the Georgia Commission's order,

from Graysville, 110 cents to Hiram, and 100 cents to Rockmart and Cedartown.

If the Commission's order merely required the rate from Graysville to these points to be "no lower, distance considered" than the defendants, according as they participate in the transportation, contemporaneously maintained on interstate traffic, it hardly can be said to have required higher rates from Graysville than from Chattanooga, although the distances were less.

It will be noticed that the rates from Graysville all violate the long and short haul prohibition, as compared with the rates from Chattanooga.

It was said at the argument before the District Court that this is permitted by the fourth section order entered by the Commission. That is not true and would be beyond the power of the Commission, because of the so-called equi-distance limitation in Section 4 of the Act.

In substance Section 4 provides that when granting relief, in special cases, the Commission shall not grant relief to a circuitous line, on account of circuity, in respect of an intermediate point from which the distance is not greater than by the short line from the competitive point which produces the violation. In other words, from Graysville to Hiram, the distance over the N. C. & St. L. being only 118 miles, which is less than the short line distance via Southern Railway from Chattanooga to Hiram, it would be beyond the power of the Commission to grant relief from the long-and-short haul rule to the N. C. & St. L. Railroad from Graysville *vs.* Chattanooga on account of circuity from the latter point. The same thing is true of the fourth section violations from Chattanooga to Ladds *vs.* Rockmart and Cedartown.

Other State Rates to Hiram.

From Junction City, Georgia, to Hiram, distance 126 miles via A. B. & C.-Southern-Seaboard, the intrastate rate now published is 135 cents under supplement 8 to I. C. C. A-716, having been advanced from the Georgia maximum rate of 110 cents. Is this required by the interstate order, in the light of the fact that the Seaboard charges only 110 cents from Chattanooga to Hiram, a route of 135 miles?

From Gaillard, Georgia, to Hiram, 119 miles, via Southern-Seaboard, the rate has been increased from 110 to 125 cents. Was this required by the terms of the Commission's order, in the light of the fact that these roads are hauling from Chattanooga to Hiram, 135 miles, for 110 cents?

The Seaboard Air Line is hauling interstate materials from Birmingham to Hiram, 141 miles for 120 cents; (Exhibits 121-B and 123-B, page 3 line 1 of Freight Tariff I. C. C. No. A-865), and this rate also applies via Southern Railway, distance 159 miles. Yet from Graysville 118 miles, Gaillard 119 miles, Junction City 126 miles, the state rates have been forced up to 125 and 135 cents.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION, ET AL.,
Appellants,

VS.

UNITED STATES OF AMERICA, ET. AL.,
Appellees

BRIEF FOR APPELLANTS, STATE HIGHWAY BOARD, ET AL.

By

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Atlanta, Georgia.

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IN THE

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OCTOBER TERM, 1930

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BRIEF FOR APPELLANTS, STATE HIGHWAY BOARD, ET AL.

JURISDICTION

Title 28, U.S.C.A., Section 345, and State of Alabama vs. United States, 279 U.S. 229, show jurisdiction and probable jurisdiction has been found to exist.

STATEMENT OF THE CASE

Appellants brought suit in the District Court to enjoin and set aside the order of the Interstate Commerce Commission which fixed minimum rates for the transportation intrastate in Georgia on chert, clay, sand and gravel, etc. At the hearing upon the interlocutory injunction the evidence considered by the Commission was not introduced. Considering only such questions as arose upon the face of the order and of the findings of fact preliminary to it, the

three-judge Court denied an interlocutory injunction (R. 162; 39 F. (2d) 167). Upon final hearing the three-judge Court dismissed the bill (R. 172) and filed an opinion (R. 168, 42 F. (2d) 467), and this appeal was brought (R. 172).

The proceeding out of which the order here assailed grew was instituted in 1925 by the Interstate Commerce Commission under Section 13 of the Act (R. 89) to determine whether the rates which the railroads were then required by the Georgia Commission's order of February 25, 1925 to maintain on traffic within Georgia upon chert, clay, sand, gravel, etc., resulted in undue preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce, on the other, or an unjust discrimination against interstate or foreign commerce; and, if so, what rates should be prescribed to cure the situation (R. 90). Several complaint cases and one investigation and suspension proceeding were heard with the title case on one record and one report issued January 21, 1927, 122 I.C.C. 133 (R. 12 to 76). This report found that the order of the Georgia Commission of February 25, 1925 did not bring about a rate situation which had in the past been unjustly discriminatory against interstate commerce and no finding was made or order entered for the future insofar as unjust discrimination against interstate commerce was concerned. (R. 59). A new scale of maximum reasonable interstate single line and joint line distance rates was prescribed in the order of January 21, 1927 for application between points in Georgia and points in other states.

Subsequently and on March 13, 1928, the Georgia

Commission promulgated an order prescribing a new set of rates on the aforesaid commodities within Georgia, which rates were higher than the rates prescribed in its former order of February 25, 1925 (R. 76). Upon petition of the railroads, the Interstate Commerce Commission, by order of June 4, 1928 (R. 86), reopened the original investigation for further hearing to determine the sole question of whether the rates and minimum weights which the railroads were required to maintain on the commodities specified within Georgia under the order issued by the Georgia Commission on March 13, 1928 were unlawful in their relationship to the interstate rates and minimum weights which had been prescribed as reasonable on the same commodities in the original report of the Interstate Commerce Commission, 122 I.C.C. 133. Additional hearings were had and on December 9, 1929, the Interstate Commerce Commission rendered its report, 160 I.C.C. 309 (R. 88 to 118); finding that the rates fixed in the order of the Georgia Commission of March 13, 1928 were unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers and unjustly discriminatory against interstate commerce to the extent that the state rates were lower, distance considered, than the interstate rates prescribed in the first report of the Interstate Commerce Commission, 122 I.C.C. 133; *no* finding was made that the minimum weights prescribed by the Georgia Commission were unlawful; the Commission said that the record did not afford a sufficient basis for a finding of undue prejudice respecting the rates from Chattanooga (R. 110 to 112).

The order of the Commission required the railroads to publish, maintain and apply to the intrastate transportation of sand, gravel, clay gravel, crushed

stone and slag, in carloads, between points in the State of Georgia rates which should not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities and which rates had been previously found and prescribed as reasonable (R. 113 to 117).

This order of December 9, 1929 is the one here sought to be set aside.

THE ISSUES PRESENTED

The assignment of errors (R. 173–180) and the points upon which appellants rely (R. 816–820) show in detail the grounds on which it is sought to annul the order of the Commission, and a short summary thereof is:

1. There was neither evidence nor definite findings justifying the regulation of all intrastate rates; and

2. The order attempts to regulate intrastate rates based on future action of the railroads; and

3. The order prescribed joint line differentials which create discriminations against intrastate shippers; and

4. The order purporting to bring intrastate rates into harmony with interstate rates conflicts with the limitations put on the Federal Commission by the Constitution, the Interstate Commerce Act and the decisions of the Supreme Court; and

5. The order cannot be sustained under Sections 3 or 13 of the Interstate Commerce Act; and

6. There was no adequate and fair hearing; and

7. These reasons combined show arbitrary action by the Interstate Commerce Commission.

In discussing these summarized grounds, we shall make references to applicable facts and findings relating to each. The Court is requested to consider this brief as supplemental to the more detailed brief filed by the appellant, Georgia Public Service Commission.

PRINCIPLES APPLICABLE TO ALL APPELLANTS' CONTENTIONS

As constitutional issues are presented *, such issues must be submitted

> "to a judicial tribunal for determination upon its own independent judgment as to both law and facts." Ohio Valley Water Co. v. Ben Avon Borough, 253 U.S. 287, 289(†)."

The Commission has the power to protect interstate commerce from being regulated or burdened by intrastate rates, but in the absence of a specific finding supported by substantial evidence of such burden or regulation it has no power "to establish a unified control"‡.

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*It is claimed that the Commerce Clause (Errors 1 and 2, R. 174), the Interstate Commerce Act (Error 2, R. 174, Error 7, R. 176, Error 12, R. 177), and the Fifth Amendment (Error 7, R. 176, Error 19, R. 179) were violated by the orders assailed.

† See also in Manufacturers' R. Co. V. United States, 246 U. S. 457, at pl 488, where the court, speaking through Pitney, J:, said:: "So long as the Commission proceeds in accordance with the requirement of the Commerce Act, its administrative orders * * * if made after due hearing and supported by evidence, are not subject to attack in the courts. But the cases recognize that matters of constitutional rights are not to be conclusively determined by the Commission.'

Mississippi Railroad Commission v. Illinois Central R. R. Co., 203 U. S. 335, 344;

Bluefield Improvement Company v. Public Service Commission, 262 U. S. 679, 688;

Beidler v. South Caroline Tax Commission, decided Nov. 24, 1930, preliminary print 282 U. S. 1, and cases cited in note.

‡ Houston E. & W. T. Ry. Co., v. United States, 234 U. S. 342, 357.

Before the Federal authority can regulate commerce wholly within one state there must be "certainty and precision". (*), a "high standard of certainty" "substantial disparity"(†), and "the power of the Commission is dominant only to the extent that the exercise is found by it to be necessary to remove the existing discrimination against interstate traffic"(**).

In Florida v. United States this court emphasized these principles (††).

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* Chicago, M. & St. P. R. Co., v. State Public Utilities Com. of Illinois, 242 U. S. 333, 357.

† Railroad Com. of Wisconsin v. Chicago B. & Q. R. Co., 257 U. S. 563, 579, 590, 591.

** American Express Co. v. South Dakota, 244 U. S. 617, 625, 626.

†† Decided January 5, 1931, 75 L. ed. advance pamphlet 212, 219, 282 U. S. 194, 211-12.

1. There was neither Evidence nor Findings of appropriate definiteness supporting the Order prescribing Intrastate Rates.

A. Statement of Facts.

The table(*) set out in the report of the Interstate Commerce Commission of December 9, 1929 (R. 94) illustrates the differences between the interstate rates prescribed by this Commission in its report of January 21, 1927, and the rates promulgated by the order of the Georgia Commission of March 13, 1928. It will be noted that up to 200 miles the Georgia

	Single Line			Joint Line		
Miles	I. C. C. Docket 17517	Georgia Comm. order 3-13-28	Differences	I. C. C. Docket 17517	Georgia Comm. order 3-13-28	Differences
	Cents	Cents	Cents	Cents	Cents	Cents
10	50	50		65	50	—15
20	55	55		70	55	—15
30	60	60		75	60	—15
40	70	70		85	70	—15
50	80	70	—10	95	70	—25
60	80	80		95	80	—15
70	90	80	—10	105	80	—25
80	90	90		105	90	—15
90	100	90	—10	115	90	—25
100	100	100		115	100	—15
110	110	100	—10	125	100	—25
125	110	110		125	110	—15
130	120	110	—10	135	110	—25
150	120	120		135	120	—15
160	130	120	—10	140	120	—20
175	130	130		140	130	—10
190	135	130	— 5	145	130	—15
200	135	140	+ 5	145	140	— 5
220	140	140		150	140	—10
230	140	150	+10	150	150	
250	150	150		160	150	—10
260	150	160	+10	160	160	
280	160	160		170	160	—10
290	160	170	+10	170	170	
320	165	170	+ 5	175	170	— 5
360	175	180	+ 5	180	180	
400	185	190	+ 5	190	190	
440	195	200	+ 5	200	200	
460	205	210	+ 5	210	210	

—Georgia Public Service Commission Scale lower than 17517 scale.
+Georgia Public Service Commission Scale higher than 17517 scale.

scale is, in some instances, the same as the interstate single line scale and in other instances the Georgia scale is less, generally by ten cents. At 200 miles and beyond, the Georgia scale is, in some cases, the same as the interstate single line scale but is generally higher than the latter by amounts ranging from 5 to 10 cents. The Georgia scale is less than the interstate joint scale by amounts ranging from 5 to 25 cents, except that for the longer hauls the two scales are the same in certain instances.

Different minimum carload weights were prescribed by the Federal Commission and the Georgia Commission. The Interstate Commerce Commission found that the evidence did *not* justify a finding that the minimum weights prescribed by the Georgia resulted in undue preference and advantage to Georgia shippers or in unjust discrimination against interstate commerce (R. 112).

The report of December 9, 1929, of the Federal Commission compares the revenues under the Georgia rates prescribed on March 13, 1928 upon a limited number of shipments moving during prescribed periods over certain lines with revenues that would have accrued under the new interstate rates prescribed by the Federal Commission in its report of January 21, 1927 (R. 100 to 101). No evidence was introduced to show the total revenues which would be received under the new Georgia rates upon all intrastate shipments as compared with the revenues that would be received upon such shipments under the new interstate rates. The Interstate Commerce Commission did not find that the new Georgia rates would be unremunerative.

The investigation of the Georgia rates was instituted by the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act (R. 89). There is no basis for any claim that Section 15 (a) can be used to support the Commission's findings. No pleadings testimony or "findings of proper explicitness", or otherwise, relate thereto (*). Neither the Commission nor the trial court relied on such claim.

The purpose of the Interstate Commerce Commission seems to have been to harmonize the interstate and intrastate rates regardless of whether or not there was any violation of the law shown. This purpose, clearly evidenced in the Commission's opinion in this case, ignored prior decisions of this court (†) and runs directly counter to the opinion in Florida v. United States, ante.

In its opinion of January 21, 1927, the Commission said:

> "* * * it is felt that the Georgia commission will cooperate in authorizing such revisions as may

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* In Florida v. United States, 282 U. S. at 208, this court dealing with a similar situation said: "It would be an extreme and unwarranted assumption that to protect this interstate commerce from unjust discrimination as between persons or localities, it was necessary to alter the existing rates for the transportation of logs between all points whatever within Florida. Such a conclusion would not only require evidence to support it but findings of appropriate definiteness to express it. Illinois C. R. Co. v. State Pub. Utilities Commission, 245 U. S. 493, 507, 508, 62 L.ed. 425, 437, P. U. R. 1918C, 279, 38 S. Ct. 170; Railroad Commission v. Chicago, B. & Q. R. Co., 257 U. S. 563, 579, 580, 66 L.ed. 371, 379, 380, 22 A. L. R. 1086, 42 S. Ct. 232; New York v. United States, 257 U. S. 591, 600, 66 L.ed. 385, 390, 42 S. Ct. 239. The district court, again examining the record upon the rehearing, reaffirmed its opinion that there was no such evidence, and it is sufficient on this appeal to observe that there are no findings of proper explicitness to that effect."

† Arkansas Ry. Com. v. Chi. R. I. & P. R. Co. 274 U. S. 597; Houston East and West Texas Ry. v. United States, 234 U. S. 342; Illinois Cen. R. Co. v. Publ c Utilities Com. 245 U. S. 493; Railroad Com. of Wisconsin v. Chicago B. & Q. R. Co. 257 U. S. 563, 566; New York v. United States, 257 U. S. 591, 601.

be necessary to bring their rates *into harmony* with the interstate adjustment herein approved." (R. 59) (Italics ours.)

In its order of June 4, 1928, the Interstate Commerce Commission instituted a new hearing to consider the lawfulness of the intrastate rates prescribed by the Georgia Commission on March 13, 1928, In its order the Commission referred to its prior report and said:

> "* * * it was felt that the Georgia Public Service Commission would cooperate in authorizing such revision in the intrastate rates within Georgia as might be necessary to bring such rates *into harmony* with the interstate adjustment prescribed as aforesaid" (R. 86) (Italics ours.)

and:

> "That a petition has now been filed on behalf of carriers respondent in number 17517 * * * in which it is averred that the Georgia Public Service Commission * * * required petitioners to establish rates * * * which are *not in harmony* with * * * the rates required to be established by the Commission for interstate traffic." (R.87) (Italics ours.)

In the second opinion of the Commission, dated December 9, 1929, the Commission states that:

> "* * * the respondent carriers filed with us their supplemental petition setting forth, among other things, that the aforesaid rates prescribed by the Georgia commission are *not in harmony with* * * * the 17517 scales." (R. 92) (Italics ours.)

and:

"Respondents and others complained and are here contending that this intrastate revision is so *out of harmony with* the approved interstate revision that it has brought about an unlawful relationship." (R. 93) (Italics ours.)

The whole theory of the Interstate Commerce Commission seems to have been based upon the idea of "harmony", while the Supreme Court of the United States, in the Wisconsin Case, bases the right to control state rates on "substantial disparity". In Chicago, Milwaukee & St. Paul Railway Company v. State Public Utilities Commission of Illinois, 242 U.S. 333, the state rates were lower than the interstate rates, yet the Supreme Court said, at page 338:

"Some relation we may admit between the state and interstate service, but the evidence does not bring it within that certainty and precision of influence that induced the decision in Houston, E. & W. T. R. Co., v. United States, 234 U.S. 342 * * *, but leaves it controlled by the Minnesota Rate Cases, supra; Oregon R. & Nav. Co. v. Campbell, 250 U.S. 525 * * *; and Louisville & N. R. Co. v. Garrett, 231 U.S. 298 * * *. Therefore, the order is not subject to the charges against it, and sections 3, 13, and 15 of the Interstate Commerce Act have no application."

In the Wisconsin Case, 257 U.S. 563, at page 579 the Supreme Court uses the phrase "high standard of certainty" and in the Arkansas Case, 274 U.S. 597, at 603, the Supreme Court said:

"The intention to interfere with the state function of regulating intrastate rates is not to be presumed."

B. Argument and Authorities

It is, however, unnecessary for us further to demonstrate the lack of evidence bringing this case within the rule that intrastate rates must not be so low as to be a burden on interstate commerce because the Commission made no findings supporting any such claim and this court has said in the Florida Log Case (Florida v. United States, supra) "there should be appropriate *findings* upon *evidence* to support an order * * *"

The Commission not only did not make findings appropriate to an order regulating rates throughout the State of Georgia, it could not under the evidence in the record have made such findings. The order of the Commission here assailed, therefore, is not authorized under any power delegated to the United States (Constitution, Art. I, sec. 8, clause 3), and invades the field of reserved rights of the State of Georgia (Constitutional Amendment X).

The Florida Log Case, above, which supports this conclusion, is not different in this respect from the former decisions of this court. That decision follows the Shreveport case(*) and other cases heretofore decided by this Court. In the Shreveport case, page 357, it was said:

> "Congress thus defined the scope of its regulation, and provided that it was not to extend to purely intrastate traffic. It did not undertake to authorize the Commission to prescribe intrastate rates, and thus to establish a unified con-

* Houston E. & W. T. R. Co. v. United States, 234 U. S. 342; Florida etc. R. Co. v. United States, 234 U. S. 167; American Express Co. v. South Dakota, 244 U. S. 617; Illinois Central R. Co. v. Public Utilities Com., 245 U. S. 493.

trol by the exercise of the rate-making power over both descriptions of traffic. Undoubtedly, in the absence of a finding by the Commission of unjust discrimination, intrastate rates were left to be fixed by the carrier, and subject to the authority of the states, or of the agencies created by the states."

II. THE ORDER ASSAILED ATTEMPTS TO REGULATE INTRASTATE RATES BASED ON FUTURE ACTION OF THE RAILROADS.

This point is discussed at length by Judge Sibley in the opinion of March 3, 1930, refusing an interlocutory injunction, 39 F. (2d) 167 (R. 165–6). At page 170 Judge Sibley, in speaking of the order of December 9, 1929, said:

> "The writer thinks it means to operate automatically in the future whenever interstate rates may be altered, and, that thus intended, it is unlawful."

but strange to say, this point is not mentioned in the opinion upon final hearing.

The order of December 9, 1929, is set out at record 113 to 116. In the second paragraph of the order as same appears at record 115, the Commission ordered the railroads –

> "to establish on or before March 3, 1930, and *thereafter to maintain* and apply to the intrastate transportation of sand * * * between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities * * *" (Italics ours.)

It will be noted from the above that the railroads were ordered "thereafter to maintain" rates not lower than those *contemporaneously applicable* in interstate commerce. The words "thereafter to maintain" are not limited in any manner to the rates which were "contemporaneously applicable" at the time the order was entered on December 9, 1929. Without such limitation, the plain construction of the order is that it was intended to operate automatically in the future whenever interstate rates may be altered. Thus intended, the order is clearly unlawful.

Under the order of the Commission it is extremely doubtful what the Commission meant by prescribing minimum rates not lower than the interstate rates "contemporaneously applicable." At the Atlanta hearing Mr. Price testified that:

> "The rates fixed by the I. C. C. in Docket 17517 are maximum rates, and our investigation shows that in many instances the carriers are publishing lower rates than the scale." (R. 755)

and at record 756 through 760 this witness supported his statement by a large number of references to interstate rates which were lower than the 17517 scale. At page 170 of 39 F. (2d), in the opinion rendered upon the application for an interlocutory injunction the court stated that "the record does not show what the exact situation is" with respect to minimum interstate rates which were lower than the interstate scale and that on this account the matter could not be adjudicated. This defect was remedied by the introduction of the record at the final hearing, and from record 756 through 760 instances of interstate rates lower than the scale prescribed by the Interstate Commerce Commission are stated. These interstate

rates lower than the scale mentioned are not an "exceptional situation" but are so general as to render uncertain and invalid the entire order of December 9, 1919.

At record 799 the witness Harry T. Moore introduced his Exhibit 196-B and in referring to this exhibit, Mr. Moore was asked the question at record 800:

> "Q. And it also illustrates (Exhibit 196-B) does it not, Mr. Moore, that in numerous instances the carriers are not now collecting the full 17517 scale?"

and replied:

> "A. That is true."

III. The Order Prescribes Joint Line differentials which create Discriminations against Intrastate Shippers.

The new interstate rates on sand, etc., contrary to the system adopted on fertilizers, brick, and other heavy commodities differ for single and joint line hauls. The State's scale makes no difference in the rates on single and joint line hauls.

At record 740 the witness Price testified:

> "Subsequent to the Southern Class Rate Case, I.C.C. docket 13494, the Georgia Commission has adopted and put in force the class rates prescribed by the Interstate Commerce Commission, and has also revised the rates on fertilizer, sugar, roofing, wooden building material, cement, lime, brick, sand and gravel, iron and steel articles. The Georgia Commission did not provide any

joint line differentials on any of these commodities, except on brick, in which case the Georgia Commission approved the rates which had been approved by the Interstate Commerce Commission in its docket I. & S. 1885, and the joint line differentials on brick faded out at 80 miles.

"It is correct to say that in prescribing rates on sand and gravel in its first order, effective April 1, 1925, the Georgia Commission did provide for joint line differentials under 100 miles, but when these rates were again revised, effective May 1, 1928, the single line rates were generally increased and all joint line differentials eliminated."

The state rates are about the same, perhaps a little higher, than the interstate single line rates. There is available to interstate shippers into Georgia single line hauls covering much more mileage than is available to intrastate shippers in Georgia. This is illustrated by Exhibit 187-B introduced at record 792. The interstate joint line rates are generally, although not always, higher than the state's single line rates. The principal interstate shippers located at Birmingham, Chattanooga, and Columbia, ship into the larger markets in Georgia on single line rates. If the Georgia Commission had made two lines of rates, it would have created unjust discrimination among its own shippers. While exhibits are numerous as illustrative of the situation, those of H. T. Moore, Exhibits 188-B through 193-B, are typical (R. 793 to 797).

On Exhibit 188-B, record 793, are shown rates from Alabama City, Alabama, to points in Georgia, and the Georgia scale rates applicable for the distance to each of these points. The Georgia scale is the same

as the interstate rates to 26 points, lower to 7 points, and higher to 44 points. If Graysville, the Georgia producing point used in this exhibit, had to pay the joint line interstate scale, such rates would to all the points named in the exhibit be higher for similar mileages than the interstate shippers at Alabama City would pay. Exhibits 189-B through 193-B show similar situations as to other points in and out of Georgia (R. 794 to 797), and clearly portray the disadvantage to the Georgia shipping points under joint line differentials. Other such exhibits are numbered 194-B to 196-B (R. 797–9).

At record 800 the witness H. T. Moore said:

> "In conclusion, I would like to make this statement, that in our opinion the only purpose a differential can possibly serve is to create an artificial rate situation calculated to give some community an advantage to which its geographical location does not entitle it. This conclusion is in accord with views expressed by the Interstate Commerce Commission in 101 I.C.C. 603."

At record 731 the witness Price, for the Georgia Commission said:

> "In view of the location of the Georgia industries it was and is the expressed judgment of the Georgia Commission that, to provide rates on basis of combination, or with joint line differentials for any extended distance, would have the effect of causing undue discrimination between the Georgia shippers, that is, against certain shippers in Georgia, in favor of other shippers in Georgia, and would also cause discrimination against the Georgia shippers in favor of shippers with plants at Montgomery, Ala., Birmingham, Ala., and Chattanooga, Tenn."

and illustrated the above quotation in his testimony at record 732 to 733 by making use of the map introduced as Exhibit 161-B.

At record 741 Mr. Price stated:

> "As we have shown by exhibits (161-B to 165-B) which I have filed, if joint line differentials should be applied to the rates on sand, gravel, and crushed stone in Georgia, it would have the effect of causing discriminations between the producers and shippers of these materials in Georgia, and would also cause discrimination against the shippers in Georgia in favor of shippers at Birmingham and Montgomery, Ala. For this reason I am of the opinion that the Georgia Commission was clearly justified when it provided a common scale to be applied for both single and joint line, the rates provided in this scale being generally higher than the rates previously in effect in Georgia." (Parenthesis ours).

As has been stated heretofore, Exhibit 161-B is a map of the State of Georgia showing the location of some of the sand, gravel, and crushed stone industries in Georgia and also the railroads in Georgia. To give a more complete picture of the Georgia situation the witness Price introduced in evidence the series of exhibits numbered 169-B through 177-B (R. 746 through 752). These exhibits, in connection with the explanation thereof by Mr. Price, at record 746 through 752, show the discrimination that would be created among the Georgia industries if the full measure of the maximum interstate rates prescribed by the I.C.C. should be made to apply in Georgia. Mr. Price testified that the specific instances of discrimination shown at record 746 through 752 are shown in detail in exhibits 169-B through 177-B. At record 763 the witness Price introduced his Exhibit 179-B and stated:

"The purpose of this exhibit is to show the inconsistencies and the fourth section departures that are now being practiced on interstate traffic.

"This exhibit also shows that if the Georgia scale was applied these inconsistencies and fourth section departures would be removed."

At record 764 Mr. Price stated:

"My exhibit No. 180-B is a statement of rates on sand and gravel from Montgomery, Ala. to destinations on the Atlanta, Birmingham & Coast Railroad, between Cordele and Fitzgerald, Ga., inclusive. Both the Seaboard Air Line Railway and the Atlanta, Birmingham & Coast Railroad serve Fitzgerald, Ga., which is just south of Cordele, Ga. The rate from Montgomery to Fitzgerald is 140 cents, whereas it will be noted that the rates to all intermediate stations from Westwood to McKenzie, Ga. are higher than the rate to Fitzgerald, which is a departure from the fourth section, and a discrimination against these intermediate points in favor of Fitzgerald.

"At Westwood the distance from Montgomery is 205 miles, and the rate 150 cents, whereas, at Fitzgerald the distance is 206 miles, and the rate 140 cents, or 10 cents less than to Westwood."

The order of the Interstate Commerce Commission under attack creates an unjust prejudice against intrastate shippers in Georgia and an undue preference in favor of interstate shippers shipping into Georgia. In the scale prescribed for interstate shipments a maximum rate is provided and the interstate carriers are permitted to make groups and the long lines are permitted to meet the rates of the short lines. While, intrastate in Georgia, shipping points 4 miles apart are not permitted to be grouped and the longer lines

are not permitted to meet the rates of the short lines.

At record 741 through 743, Mr. Price cited numerous dockets considered by the Interstate Commerce Commission, in which it did not prescribe joint line differentials. At record 743 Mr. Price said:

> "* * * the tendency at least has been to prescribe rates without joint line differentials."

See Alabama v. United States, Docket 513.

AUTHORITIES

The order of the Interstate Commerce Commission of December 9, 1929, attempted to displace and supersede the order of March 13, 1928, issued by the Georgia Commission. In its order the Interstate Commerce Commission prescribes rates with joint line differentials for application intrastate in Georgia. Such rates have the effect of causing undue discrimination against shippers in Georgia in favor of other shippers in Georgia and cause discrimination against the Georgia shippers in favor of shippers with plants located at Montgomery, Birmingham, Alabama; Chattanooga, Tennessee, etc. *The Interstate Commerce Commission should not be the breeding place of discrimination.* Under the facts of this record the latter Commission had no power to enter the order of December 9, 1929, and the enforcement of the order should be enjoined by this court. To sustain the order here attacked it is necessary to allow the non-discriminatory rates of the Georgia Commission to be replaced by the highly discriminatory system of rates prescribed by the Interstate Commerce Commission. Such an arbitrary and

unreasonable order is not binding upon this court.(*)

IV. The Order under Attack is Predicted upon an Assumed Power to "Harmonize" State and Interstate Rates.

In its opinion of December 9, 1929, the Commission finds that in so far as intrastate rates are lower than interstate rates there is unjust discrimination against interstate commerce. The order of December 9, 1929, requires such claimed unjust discrimination to be removed by prescribing a schedule of rates set up as an appendix to the order. In many instances, the rates shown in said schedule *lower* intrastate rates. Obviously, intrastate rates prescribed by the Georgia Commission, which are higher than the interstate rates, could not discriminate against the lower interstate rates. Over such intrastate rates the Interstate Commerce Commission has no jurisdiction.

No power inheres in the Interstate Commerce Commission to bring interstate and intrastate rates *into harmony*. The "harmony" theory is a creation of the Interstate Commerce Commission and is unsupported by statutory provision or sanction. Such theory is an effort by the Commission to increase its powers. The application of the theory conflicts with the limitations put upon the Commission by the Constitution, the Interstate Commerce Act and the decisions of the Supreme Court interpreting said act.

* Int. Com. Com. v. Louisville & N. R. Co., 227 U. S. 88, 57 L.ed. 431, 33 Sup. Ct. 185, citing Int. Com. Com. v. Union Pac. R. Co., 222 U. S. 541, 56 L.ed. 311, 32 Sup. Ct. 108; Tang Tun v. Edsell, 223 U. S. 673, 681, 56 L.ed. 606, 32 Sup. Ct. 359; Chin Yoh v. U. S., 208 U. S. 8, 13, 52 L.ed. 369, 28 Sup. Ct. 201; Low Wah Suey v. Backus, 225 U. S. 460, 468, 56 L.ed. 1165, 32 Sup. Ct. 734; Zakonite v. Wolf, 226 U. S. 272, 56 L.ed. 218, 33 Sup. Ct. 31; United States v. B. & O. S. W. R. R., 226 U. S. 14, 57 L.ed. 104, 33 Sup. Ct. 5, 9; Atlantic C. L. R. Co. v. North Carolina Corp. Com., 206 U. S. 1, 20, 51 L.ed. 933, 27 Sup. Ct. 585; Wisconsin, M. & P. R. Co. v. Jacobson, 179 U. S. 287, 301, 45 L.ed. 194, 21 Sup. Ct. 115, Anchor Coal Co. v. U. S., 25 F. (2d) 462, 471.

A difference between interstate and intrastate rates is not unlawful per se. The Georgia intrastate rates are fixed upon a different basis than are the interstate rates. The intrastate rates are the same whether the shipment is over one or more lines. The interstate rates are higher when the shipment is over more than one line.

The only rate evidence introduced at the November 1928 hearing by the railroads merely showed that the Georgia intrastate rates differed from the new interstate rates. Mr. Doss and Mr. Crane were the principal witnesses for the railroads. Mr. Doss began his testimony at record 619. At record 621 he introduced Exhibit 98-B comparing the Georgia intrastate rates with the interstate rates prescribed on January 21, 1927. Exhibit 99-B, record 621, compares the trunk line scales prescribed in the report of January 21, 1927, with the Georgia rates ordered into effect on March 13, 1928, by the Georgia Commission. Exhibit 100-B, record 623, compares the intrastate and interstate rates to forty-six destinations, and Exhibit 101-B, record 625, is a map showing the location of the forty-six destinations. Exhibit 102-B, record 625, shows the destinations and rates to various Georgia points from one point in South Carolina and several points in Georgia.

At record 626 the following occurred:

> "Q. (By Mr. Gwathmey) Mr. Doss, is uniformity in the mileage scales applicable on the commodities between points in the so-called Southern territory, exclusive of the Florida peninsula and intrastate between points in the states other than Florida served by the Atlantic Coast Line, a necessary and desirable thing, in your opinion?"

and over the objection of Mr. Burchmore, at record 626, the witness was allowed to answer, and said:

> "In my opinion, the transportation and other conditions on the lines of the Atlantic Coast Line other than in the peninsula of Florida are such that varying levels of rates on these commodities are not justified and cannot be operated without causing discrimination and trouble."

The witness Crane introduced a number of exhibits. His Exhibit 105-B, record 652, merely shows the former Georgia scale, the present Georgia scale, and the interstate scale. Exhibit 108-B, (R. 654) and Exhibit 109-B (R. 655), merely compare the Georgia rates from specified points with interstate rates from other points. This witness introduced other similar rate comparisons and exhibits at record 656-667.

None of the exhibits introduced by the railroads pretended to show that the Georgia rates were unreasonable. The exhibits merely showed that the Georgia rates were different from the interstate rates.

In United States v. Illinois Central R. Company, 263 U.S. 515, at 524-5, 68 L.ed. 417, at 425, the Supreme Court said:

> "To bring a difference in rates within the prohibition of sec. 3, it must be shown that the discrimination practised is unjust when measured by the transportation standard. In other words, the difference in rates cannot be held illegal unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions. But the mere fact that the Knoxo rate is inherently reasonable, and that the rate from competing points is not

shown to be unreasonable low, does not establish that the discrimination is just. Both rates may lie within the zone of reasonableness and yet result in undue prejudice. American Exp. Co. v. Caldwell, supra.

> "Every factor urged by the carriers as justifying the higher rate from Knoxo appears to have been considered by the Commission. How much weight shall be given to each must necessarily be left to it. The Commission found, among other things, that the cost of the service from Knoxo was not greater than the cost of the transportation from many other points which enjoyed the lower rate; that the value of the service was the same; and that other traffic conditions incident to shipment from Knoxo were so similar to those of shipments from other points enjoying a lower rate that the prejudice to which the Swift Lumber Company had been subjected was undue and unreasonable."

No such facts were found in connection with the sand and gravel rates as are discussed in the above quotation. There is no substantial evidence in the record to show that the Georgia rates are unlawful under sections 3 or 13 of the Interstate Commerce Act.

V. The Order cannot be Sustained under Sections 3 or 13 of the Interstate Commerce Act.

The Interstate Commerce Commission entered a statewide order to *harmonize* all state rates in Georgia with interstate rates ordered into effect in the original report. Such order will include many rates not within the proper class or the reason of the order. As shown at record 94 the Interstate Commerce Commission found that some of the new Georgia rates were higher than the new interstate rates. Such intra-

state rates could not discriminate against the interstate rates. At record 95 it appears that the minimum carload weight prescribed by the Interstate Commerce Commission in connection with the 17517 scales is different from the minimum weight prescribed by the Georgia Commission in connection with its scales. At record 112 it appears that the Interstate Commerce Commission did *not* find that the minimum weight prescribed by the Georgia Commission would result in undue preference or unjust discrimination. The decision of the Commission and the motion for rehearing filed by the Georgia Commission (Exhibit E, R. 118) show that the mileage under the Georgia rates is arrived at differently than under the new interstate rates.

At record 776 the witness Price testified:

> "The rule of the Georgia Commission is entirely different from the rule for computing mileages as fixed by the Interstate Commerce Commission in docket 17517, in that under 17517 a carrier is required to compute the rate via the shortest route, the rate making route, and via junctions where carload traffic may be interchanged without the transfer of lading, and that becomes the rate regardless of how you move the traffic, as I understand the order, you have no option in the matter. The Georgia Commission's order does not require that."

The new interstate rates and the new Georgia rates are not comparable. Exhibit 163-B (R. 735) shows the rate of progression of the Georgia scale. Exhibit 164-B (R. 735) shows the rate of progression of the 17517 scale. At record 735 Mr. Price stated in reference to Exhibit 164-B,

"Attention is directed to what we consider an inconsistency in the rate of progression of the rate. It will be noted that the mileage blocks are made up of 10 miles, 20 miles, 25 miles, 30 miles, and 40 miles, but the rate is not graded uniformly with the mileage blocks."

The fact that the larger part of the interstate shipments moves on single lines and that many, if not most, of the Georgia producers must use joint lines for the greater part of their shipments so distinguishes the rates as to remove all relationship on which a violation of Section 3 or 13 of the Act could be based.

AUTHORITIES

Invasion of the field where intrastate rates are made is never permitted without substantial justification.

In United States v. Illinois C. R. Co., 263 U.S. 515, it was held:

"Mere discrimination does not render a rate illegal under section 3 of the Act to Regulate Commerce, but, to be obnoxious to the section, the discrimination must be unjust."

In Railroad Commission of Wisconsin v. C. B. & Q. R. Co., 257 U. S. 563, the Court said:

"It (this power) does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commission in this respect should be directed to *substantial disparity* which operates as a real discrimination against, and obstruction to, interstate commerce." (Italics and Parenthesis ours).

See also Arkansas Ry. Com. v. C. R. I. & P. R. Co., 274 U.S. 597.

Under the principles announced in the cases last cited, the order of December 9, 1929, is invalid.

There was no such relationship shown in the record as constituted a violation of Section 3 and the evidence shows that some at least of the specific violations claimed to exist were, if violations, produced by different carriers, and were no basis for a general finding under Section 3. The Commission itself found that as to rates from Chattanooga no violation of the law was shown (R. 112).

Unquestionably, where there is shown a broad general violation of Section 3, it is not necessary, as found by the Supreme Court, to go into every particular rate, but where, as here, it is shown that there are differing circumstances and conditions and that as to some rates there is no violation, it is erroneous by a general order to reach and change all intrastate rates. The constitutional power to do this does not exist in Congress, nor was any such power sought to be conferred on the Interstate Commerce Commission.

VI. THERE WAS NO ADEQUATE AND FAIR HEARING.

HISTORY OF PROCEEDINGS

The original petition of the carriers to the Interstate Commerce Commission alleged that the Georgia state rates brought about by the order of the Georgia Commission of February 25, 1925, were unlawful in their relationship to the then *existing interstate rates*. In its opinion of January 21, 1927, the Interstate Commission said

"Considering the results brought about by this order (referring to the order of February 25, 1925, of the Georgia Commission) it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce." (R. 59) (Parenthesis ours).

In the original hearing the Interstate Commerce Commission considered only two sets of rates, to-wit: (1) the rates ordered into effect by the order of the Georgia Commission of February 25, 1925; and (2) the *existing* interstate rates, and found that the Georgia rates did not discriminate against the existing interstate rates.

In its original report of January 21, 1927, the Interstate Commerce Commission prescribed a *new* set of interstate rates but did *not* make any finding or enter any order for the future to the effect that the Georgia rates of February 25, 1925, were unjustly discriminatory against the new set of interstate rates.

On March 13, 1928, the Georgia Commission ordered into effect a new set of state rates which were higher than the state rates considered by the Interstate Commerce Commission in its original report. At record 737 Mr. Price, Rate Expert of the Georgia Public Service Commission, testified:

"The present rates in Georgia, which were made effective May 1, 1928, it will be noted for the most part, are higher than the joint line rates previously in effect in Georgia on sand, gravel, etc., and in most cases equal or are higher than the joint line rates on crushed stone, etc., in effect at that time, for distances above 100 miles.

"It will be noted that the present Georgia rates are generally equal to or higher than the maximum single line rates in I. C. C. Docket 17517, and for distances above 300 miles are the same as the maximum joint line rates in I.C.C. Docket 17517."

Thereafter the carriers filed a new petition with the Interstate Commerce Commission alleging that the new Georgia rates were unlawful in relation to the new interstate rates prescribed in the original report of the Interstate Commerce Commission. On June 4, 1928, the Interstate Commerce Commission passed an order based upon the petition of the carriers authorizing an investigation to determine the sole question of whether the rates and minimum weights which the carriers were required to maintain on sand, clay, gravel, crushed stone, and slag within Georgia under the order issued by the Georgia Public Service Commission on March 13, 1928, were unlawful in their relationship to the interstate rates and minimum weights which the Interstate Commerce Commission had prescribed as reasonable on the same commodities in its original report of January 21, 1927. A hearing was had in Atlanta, Georgia, on November 26, 27, and 28, 1928.

THE ATLANTA HEARING

At the Atlanta hearing the Examiner after stating, "I will make a brief statement of the issues", (R. 614) said:

"Upon petition of carriers respondent in No. 17517, Rates on Chert, Clay, Sand and Gravel within the State of Georgia, the Commission on the 4th day of June, 1928, reopened the said proceeding for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Com-

mission to be maintained by the said respondent carriers on intrastate shipments of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in relation to the interstate rates and minimum weights prescribed in its report and order on January 21, 1927, in said No. 17517, causes or will cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

"The Commission at the same time reopened its No. 17763, Roquemore Gravel Company, et al versus Atlanta, Birmingham & Atlantic Railway Company, et al, solely on the issue as to whether the intrastate rates and minimum weights maintained by defendants between points in Georgia on sand, gravel (washed or unwashed), clay gravel and crushed stone result in undue and unreasonable prejudice and disadvantage of complainants in No. 17763, in shipping sand, gravel (washed or unwashed) and clay gravel from Montgomery, Ala., and Chattanooga, Tenn., destinations in the state of Georgia."

Thereafter, Mr. Burchmore, representing the Georgia Public Service Commission, said at record 615-616:

"Mr. Examiner, on behalf of the Georgia Public Service Commission, I desire to present a point that as the issues are defined in your opening statement there is no jurisdiction in the Interstate Commerce Commission to enter an order in this proceeding which would have the effect or intended effect of making any change in the intrastate rates for the transportation of chert, clay, sand, gravel and other materials within the state of Georgia. That question is jurisdic-

tional and goes to the authority of the Interstate Commerce Commission under the terms of the interstate commerce act.

"I have a second point to urge, that the Georgia Public Service Commission objects to the use in the determination of the issues now presented by these proceedings of the testimony taken at the sessions of February 15, 16, 17, 18, 19, and 20, 1926, in docket No. 17517 and related cases, and the exhibits at that time offered, on three grounds:

"First, that the issues now presented to the Commission as defined by the order, and as defined by the complaint, and as defined by your opening statement, are not the same issues that were presented at that time, in those proceedings.

"Second, that the testimony then given throws no real light on the conditions now obtaining and which will obtain for the future, the question before the Commission having to do only with rates for the future and not for the past; that conditions have materially changed since February, 1926, a period of nearly three years, and that much of the matter then in evidence was immaterial to any issue now before the Commission, and much of it would be changed if now given, by reason of the changes in conditions.

"I desire to make that objection and ask that that record shall not be considered."

And, at record 616, Mr. Watkins, representing shipping interests, said:

"Mr. Examiner, on behalf of the shippers for whom I have entered an appearance, I wish to make the objection that under the pleadings in this case the Commission has no jurisdiction

whatsoever of the 13th section case, and that the petition in that case cannot be filed as a supplemental petition because it is based on facts arising after the hearing of the original case, and for the other reasons specifically set forth in my answer heretofore filed in this case."

Later, at record 617, Mr. Watkins said:

"In my statement of objections, I made no reference to the use of the record (meaning the record on the former hearing), because I did not think that question had arisen. Inasmuch as counsel have now stated that they expect that record to become part of this, I wish to register an objection to a consideration of that record here as part of this record, or as in the evidence offered in this record." (Parenthesis ours).

and:

"We do now object at any time when it may be opened to be considered, to any record heretofore made, the clients of mine not having been in the former case, and this being to them entirely new."

At record 617 the Examiner ruled:

"Gentlemen, as far as my ruling is concerned, my mind is pretty well made up. The record is open for the consideration of the matter involved in these proceedings, and I rule that it be considered so opened, and for whatever use the parties may wish to make of it."

and exception was taken.

Under the ruling of the Examiner made at the beginning of the hearing in Atlanta appellants were

denied the right to introduce evidence to show that the interstate rates prescribed in the original report of the Interstate Commerce Commission of January 21, 1927, were unreasonable and were precluded from introducing evidence as to conditions existing in 1928. Hence, although the Interstate Commerce Commission ordered the Atlanta hearing to ascertain whether the new Georgia rates and minimum weights of 1928 were unlawful in their relationship to the new interstate rates and minimum weights of 1927, no evidence was permitted to be introduced as to the reasonableness of the new interstate rates and appellants were not allowed to show the conditions existing in 1928. *Clearly no unlawful relationship could have existed if the new Georgia rates of 1928 were reasonable and the 1927 interstate rates were unreasonable.* The interstate rates of 1927, based upon evidence introduced in February 1926, might have been reasonable in 1927 – but unreasonable in 1928, due to changes in conditions. Obviously, whether the relationship between the 1928 Georgia rates and the 1927 interstate rates was unlawful would depend upon the reasonableness of the interstate rates. No adequate hearing was granted appellants because no evidence to show unreasonableness of the interstate rates was allowed.

AUTHORITIES

The Fifth Amendment to the Constitution of the United States and the Act to Regulate Commerce give the right to a full hearing and, as said by the Supreme Court in Interstate Commerce Commission v. Louisville & N. R. Co., 227 U.S. 88, orders of the Commission are void "if a hearing was denied; (or) if that granted was inadequate or manifestly unfair."

Since the hearing resulting in the order under attack related solely to the relationship between the new interstate rates and the new Georgia state rates and appellants were not allowed to show any facts concerning the unreasonableness of the new interstate rates or the conditions existing in 1928, the hearing was "inadequate and manifestly unfair." A state's rates can never be regulated by the Federal Agency until there is a specific comparison and hearing and testimony as to the rates interstate with which the state rates are contrasted. *On a finding on which the order is based there has been no hearing nor testimony.*

In Illinois Central R. Co. v. Railroad Commission of Wisconsin, 1 F. (2d) 805 state commission rates were sought to be set aside. There, as here, there had been no hearing as to particular rates nor as to the conditions existing when the order was made. The court said at page 806:

> "The question whether interstate rates are discriminatory as between shippers is one of which the courts have now no jurisdiction. There must be a hearing on that subject before the Interstate Commerce Commission and a finding by it. Texas Co. v. Abilene Co., 204 U. S. 426, 440. We see no reason for any different rule as to discrimination between interstate and intrastate rates."

As stated in the New England Divisions Case, Akron C. & Q. R. v. U.S., 261 U.S. 184, at 200:

> "A full hearing is one in which ample opportunity is afforded to all parties to make, by evidence and argument, a showing fairly adequate to establish the propriety or impropriety, from the standpoint of justice and law, of the step asked to be taken."

In its final report of December 9, 1929 (R. 93), the Commission said:

> "Respondents and others complained and are here contending that this intrastate revision is so out of harmony with the approved interstate revision that is has brought about an unlawful relationship. For the purpose of determining whether or not this is the fact, the proceedings were reopened and the further hearing had. The scope of the further hearing was properly limited to the question indicated."

In upholding the Examiner in his ruling, excluding evidence as to the unreasonableness of the 1927 interstate rates and as to changed conditions the Commission unduly restricted its inquiries. In Skinner & Eddy Corporation v. U.S., 249 U.S. 557 the Court said:

> "Transportation conditions are not static * * *."

In Texas & Pacific Railway v. I.C.C., 162 U.S. 197, 40 L.ed. 940, the eleventh headnote reads:

> "If the commission has unduly restricted its inquiries upon a mistaken view of the law, the circuit court ought not to accept the findings of the Commission as a legal basis for its own action."

Any incidental testimony concerning the reasonableness of the interstate or intrastate rates was without the limitations fixed in the order for hearing and the issues as stated by the Examiner and does not affect the legal issues.

VII. The Action of the Commission was Arbitrary.

Contrary to its action in the Alabama Fertilizer

Case, Docket 513, the Commission prescribed single and joint-line scales of rates on sand in Georgia (R. 113 to 118). Perhaps the Commission may, upon substantial evidence and appropriate findings, prescribe either a single or a joint-line scale, but in this and the Alabama Case the Commission seems to have acted arbitrarily by prescribing something different than existed intrastate. In the Alabama Case all parties advocated single and joint-line scales of rates. The Commission prescribed a single-line scale. In the Georgia Case shippers in Georgia and the Georgia Commission advocated a single-line scale; the Interstate Commerce Commission prescribed single and joint-line scales.

The interstate rates alleged to bear an unlawful relationship to the intrastate rates were rates prescribed in January, 1927, based on testimony introduced in February, 1926. The Georgia intrastate rates were promulgated in March 1928. Appellants were not allowed to show the unreasonableness of the 1927 interstate rates, nor to show any changes in transportation conditions occurring since the evidence was introduced upon which the 1927 interstate rates were based.

There were no findings of the lack of revenue.

There are no such findings of fact in the opinion of the Commission, 160 I.C.C. 309 (R. 88), as justifies its conclusion as to intrastate rates in Georgia; and this Court has said in the Florida Log Case that a conclusion of the Commission such as here made, "would not only require evidence to support it but findings of appropriate definiteness to express it."

"Harmony" was the purpose of the Commission, regardless of lack of legal justification under the law for the prescription of such harmony.

Under these circumstances it was a legally arbitrary act to assume the control and regulation of all intrastate rates on sand, gravel etc. In the Wisconsin case (*), it was said:

> "It (this power) does not involve general regulation of intrastate commerce. Action of the Interstate Commerce Commerce in this regard should be directed to substantial disparity which operates as a real diserimination against, and obstruction to, interstate commerce, and must leave appropriate discretion to the state authorities to deal with intrastate rates as between themselves on the general level which the Interstate Commerce Commission has found to be fair to Interstate Commerce." (Parenthesis ours).

It is respectfully submitted that the order assailed should be set aside.

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* Railroad Commission of Wisconsin v. Chicago, B. & Q. R. Co., 257 U. S. 563, 590, 591.

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No. 555

In the Supreme Court of the United States

OCTOBER TERM, 1930

GEORGIA PUBLIC SERVICE COMMISSION ET AL., APPELLANTS

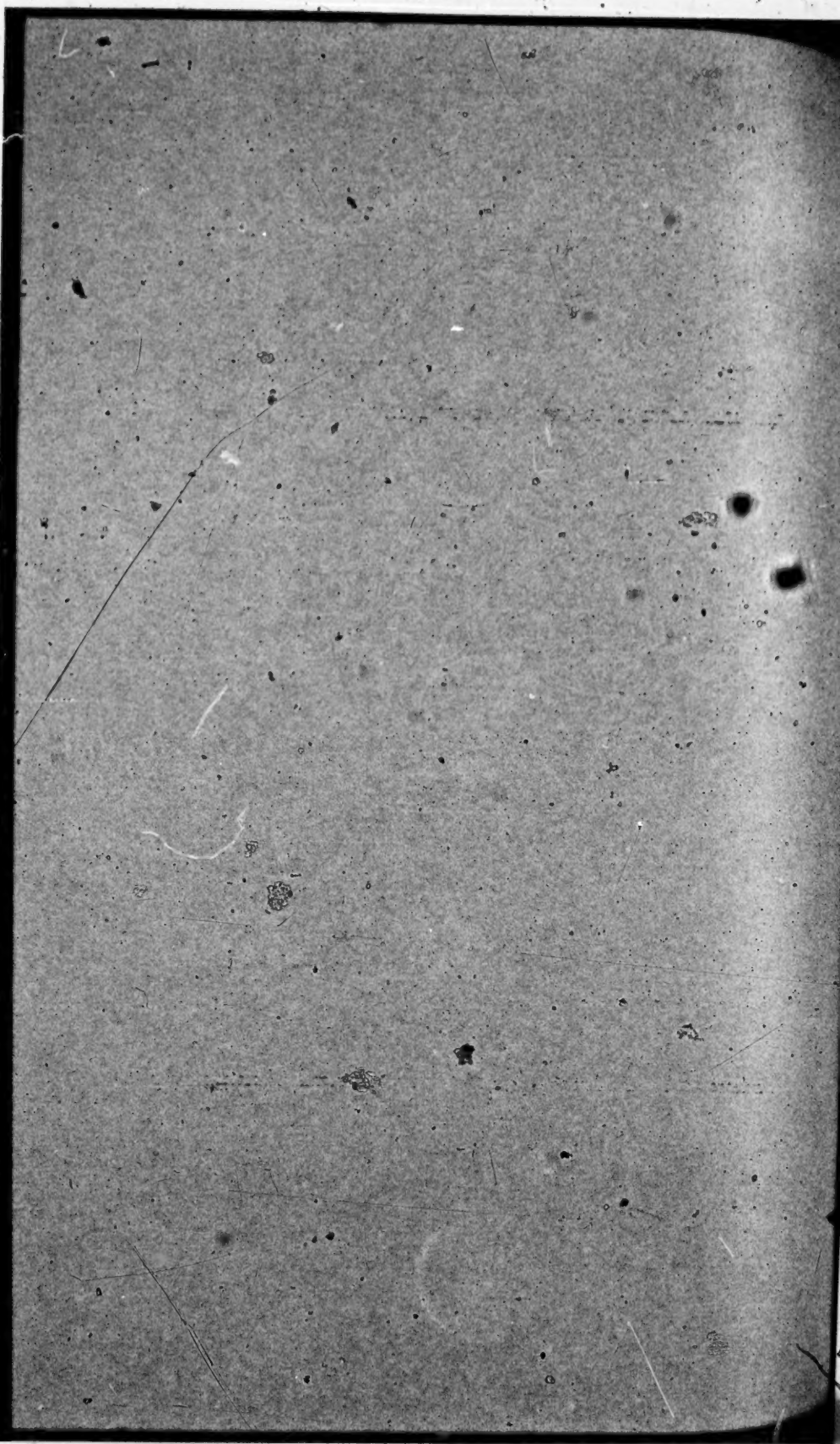
v.

THE UNITED STATES OF AMERICA ET AL., APPELLEES

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

DANIEL W. KNOWLTON,
Chief Counsel,

E. M. REIDY,
Assistant Chief Counsel.



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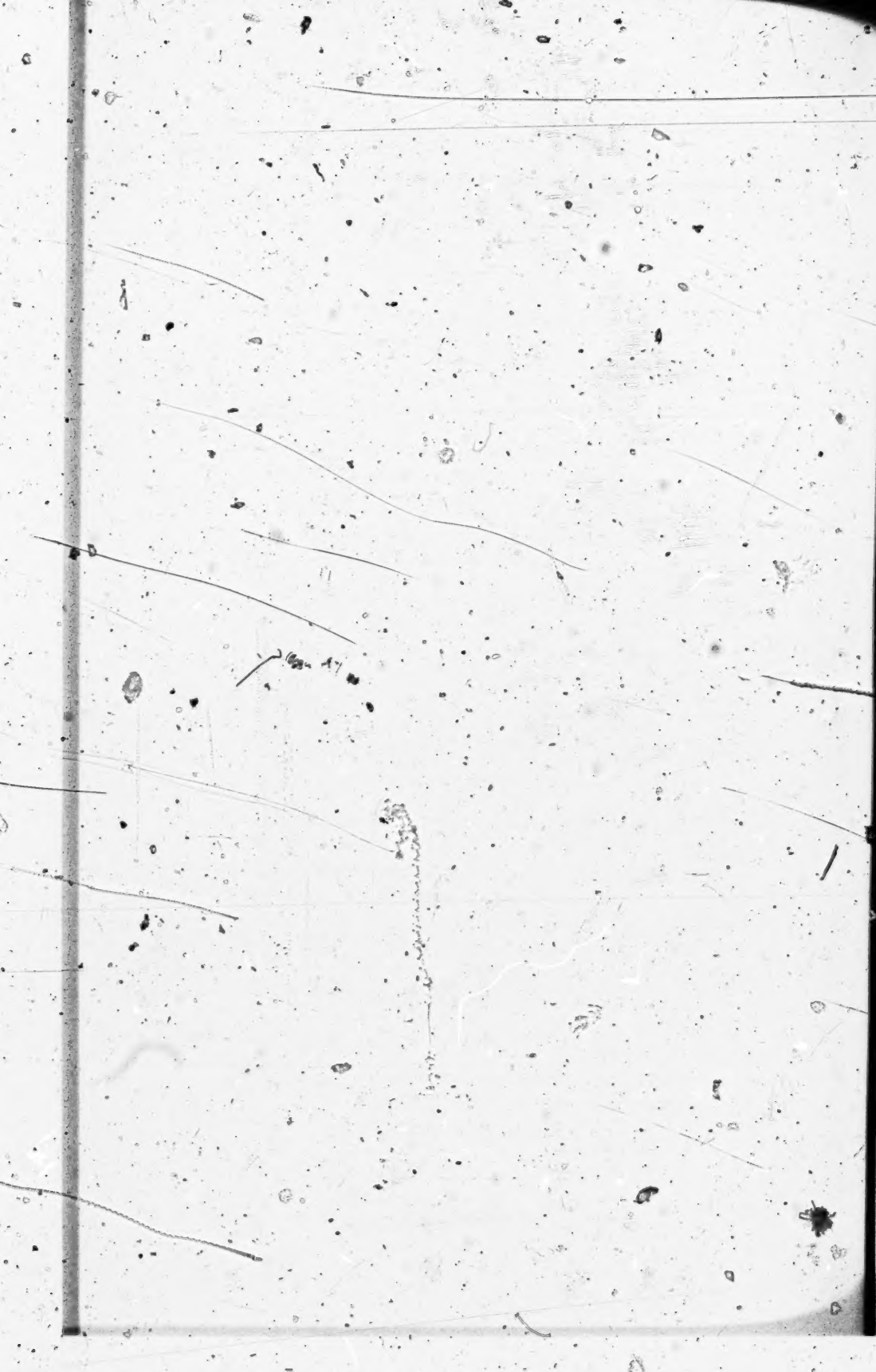

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL., appellants

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION ET AL., appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the specially constituted District Court upon the application for a preliminary injunction (R. 162) is reported in 39 F. (2d) 167. The opinion of that court upon final hearing (R. 168) is reported in 42 F. (2d) 467.

The reports of the Commission appear as Docket No. 17517, *Rates on Chert, Clay, Sand, and Gravel within State of Georgia* (R. 12, 88) and are reported in 122 I. C. C. 133 and 160 I. C. C. 309.

QUESTIONS

The ultimate question is whether the orders, herein involved, entered by the Interstate Commerce Commission under Section 13 (3) and (4) of the Interstate Commerce Act, and which prescribed Georgia intrastate rates on sand, gravel, and other allied materials, in carloads, for the purpose of removing undue prejudice against interstate shippers and unjust discrimination against interstate commerce are valid orders.

Subordinate questions going to the validity of the order are whether the Commission acted within its constitutional and statutory authority, with due regularity and certainty, and upon substantial evidence.

THE STATUTES

Pertinent provisions of the Interstate Commerce Act (24 Stat. 379) as amended by the Transportation Act of 1920 (41 Stat. 456), are:

> SEC. 3 (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. (24 Stat. 379, 380; U. S. C., Title 49, Sec. 3 (1).)

SEC. 13 (3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned * * *, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, * * * the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered * * * to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act. (41 Stat. 456, 484.)

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference,

or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceedings affected thereby, the law of any State, or the decision or order of any State authority to the contrary notwithstanding. (41 Stat. 456, 484; U. S. C., Title 49, Sec. 13 (3) and (4).)

Sec. 15a. (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate), will under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating income, equal, as nearly as may be, to a fair return upon the aggregate value of

the railway property of such carriers held for and used in the service of transportation: *Provided,* That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate property value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination, it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient, and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: * * * 41 Stat. 456, 488; U. S. C. Title 49, Sec. 15a (2) and (3).)

STATEMENT

Proceedings before the Commission

Pursuant to petition of June 5, 1925, filed by the Atlantic Coast Line Railroad Company, hereinafter called the Coast Line, and other railroads operating in Georgia; the Commission, by order and supplemental order, dated October 5, 1925, and January 4, 1926, respectively (R. 205 to 207), instituted an investigation under section 13 (3) and (4)

of the Interstate Commerce Act (U. S. C., Title 49, Sec. 13 (3) and (4)), to determine whether certain distance rates [1] on sand and gravel and other allied materials [2] prescribed intrastate by order of the Georgia Public Service Commission, dated February 25, 1925, caused undue preference or prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, or any undue or unjust discrimination against interstate commerce, and to determine what rates, if any, or what maximum or minimum, or maximum and minimum rates shall be prescribed in order to remove such preference, prejudice, or discrimination, if any, as may be found to exist. All railroads operating in Georgia subject to the Commission's jurisdiction were made respondents, and the Governor of Georgia and the Georgia Public Service Commission were given due notice. (R. 15.)

Certain complaint cases and an investigation and suspension proceeding involving the reasonableness and relationship of rates on the same commodities between various points in southern territory were heard on the same record with the case so instituted by the Commission and were dealt with in the same report. (R. 15.) Interventions

[1] Rates are stated in cents per net ton of 2,000 pounds.

[2] Chert, clay, gravel (washed or unwashed), sand (common), straight, or sand and gravel mixed, shale, slag (granulated, lump, or pulverized), stone, granite (crushed) flagging, rubble, or stone screenings. (R. 206.)

were filed on behalf of various shippers, associations, communities and public bodies. (R. 15, 16.)

The first order of the Commission (122 I. C. C. 133) prescribed, in the title case (No. 17517) certain distance scales[3] as a maximum for the establishment of reasonable interstate single-line and joint-line rates on sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in straight or mixed carloads, between points in Georgia,[4] and between points in Georgia and points in other states in southern territory, except Florida. The rates so to be established were to be "subject to a minimum weight of 90 per cent of the marked capacity of the car, except that when car is loaded to full visible capacity actual weight shall govern." Certain specified so-called weak or short lines (Appendix B, R. 67) were authorized to charge an arbitrary of 25 cents per net ton in addition to the basic rates (R. 55). In the complaint cases the same bases of rates were prescribed on sand, gravel (washed or unwashed) and clay gravel from Montgomery and Chattanooga, and on slag from Birmingham and other slag-producing points in northern Alabama and from Copperhill, Tenn., to destinations in Georgia and Mississippi. (R. 90.)

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[3] Hereinafter called 17517 scales. See Table A (R. 54). "In computing distances * * * we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading." (R. 55.)

[4] For interstate application.

At the time of its first report, however, the Commission did not enter an order in respect of Georgia intrastate rates. The proceeding had disclosed that throughout southern territory rates on the materials involved, both interstate and intrastate, were maintained with little regard to rate-making principles. Interstate rates of the trunk-line carriers were as a general rule based on their interstate scales, but, in order to meet competitive situations, many so-called depressed rates had been established to important markets, under which a large volume of the traffic was moved. (R. 20.) Within Georgia, too, there was a commodity scale of rates in effect for application between points on standard lines. "This scale was equivalent to that prescribed by the Georgia Commission in 1915, subjected subsequently to authorized general increases and reductions." (R. 21.) But, similarly as in respect of the interstate situations, the Georgia rates, under which the bulk of the traffic had been moving prior to 1925, were competitive depressed rates. The Georgia Commission order of 1925 prescribed single-line and joint-line scales as a maximum for intrastate application. While the basis was generally lower [5] than

[5] On crushed stone the required reduction was sweeping. Between important Georgia origins and destinations the average rate prior to 1925 was 140 cents. The 1925 order reduced to 103 cents and that of 1928 to 96 cents, which latter is 19 cents under the prescribed interstate 17517 scale. (R. 727; Ex. 158–B.)

the theretofore scales (Table, R. 23, 24), the effect of the order was to permit the raising of the numerous depressed intrastate rates; and it also had the result of bringing about like increases in the competitive depressed interstate rates. (R. 28, 220, 221.)

Because of these results from the Georgia order the Interstate Commission considered that "it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce." But it pointed to the fact that it was approving in the proceedings a distance scale of rates for application to all of the commodities and said that there was, of course, no transportation reason for the maintenance of a different basis of intrastate rates within Georgia than that found reasonable for interstate transportation. (R. 59.) The reason that no findings were made for the future and that no order was entered "concerning the Georgia intrastate rates was because this Commission, desirous of fostering and encouraging the spirit of cooperation between it and the State Commissions 'felt that the Georgia Commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved.'" (R. 93.)

In a subsequent decision on further hearing (140 I. C. C. 85) the 17,517 scales were prescribed for

interstate application to and from points in Florida south of the line of the Seaboard Air Line Railway, from Jacksonville to River Junction, Fla., plus certain arbitraries for that part of the haul in Florida lying south of that line.

Upon application the Commission granted relief from the long-and-short-haul clause of the 4th section of the Act so as to enable railroads other than those constituting the direct rate-making routes between points of production and consumption[6] to participate in the traffic.

As a result of the above orders of the Commission and later voluntary extensions by the carriers, the 17517 scales became established on interstate traffic throughout most of the southern territory, except between points in that portion embracing Mississippi and the western portions of Kentucky and Tennessee, and referred to as the Mississippi

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[6] Section 4 forbids the carriers from charging more for a shorter than a longer haul over the same route, except after obtaining Commission authority. The 4th section relief so granted "authorized said respondents to maintain on this traffic from any point of origin to any point of destination within the scope of the proceedings the lowest rates applicable over any routes between the same points constructed on the basis prescribed in the report and to maintain higher rates, not exceeding the scale basis, from, to, and between intermediate points. * * *"

"* * * It readily can be understood that if this relief were not accorded, the rate-making route would secure all of the traffic between competitive points. It is our usual practice, subject to appropriate limitations, to grant relief from the provisions of the fourth section in such situations as here disclosed." (R. 108.)

Valley. (R. 91.) In addition to the comprehensive establishment interstate of said 17517 scales, they were accepted for intrastate traffic within North Carolina and Alabama, and also within Kentucky and Tennessee, except the western portions thereof, namely, the above-mentioned Mississippi Valley section of southern territory, which also embraces Mississippi. (R. 91.) As to the Peninsula of Florida, transportation conditions were not the same as in southern territory generally. (R. 51.)

In Georgia there was "no transportation reason for the maintenance of a different basis of intrastate rates on these commodities * * *." (R. 59.) Following issuance of the Commission's first report and upon petition of the carriers, the Georgia Commission conducted an investigation and, on March 13, 1928, issued an order in which "it refused to authorize the application of these scales within Georgia, but directed the carriers to establish, on May 1, 1928, a different scale of rates. Those rates became effective within Georgia on May 1, 1928, as ordered." (R. 92.) Upon supplemental petition of the carriers the Interstate Commission reopened the proceedings[1] to determine whether the rates and minimum weights so prescribed by the Georgia Commission on intra-

[1] Including complaint proceeding No. 17763, *Roquemore Gravel Co. et al.* v. *Atlanta, Birmingham & Atlantic Ry. Co. et al.*, as to the issue of the relation of Georgia intrastate rates to the rates from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia. (R. 92.)

state traffic, in relation to the interstate rates and minimum weights prescribed on interstate traffic, cause, or will cause, any undue or unreasonable preference or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate commerce, on the other hand, or any unreasonable or unjust discrimination against interstate commerce; The Governor of Georgia and the Georgia Public Service Commission were given due notice. And there were various interventions in support of the attack upon, and in defense of, the Georgia Commission's order. (R. 93.)

In answer to the contention that the proceedings should have been reopened also for the purpose of determining a reasonable basis of interstate rates, the Commission pointed out that the 17517 scales had been recently prescribed in the proceedings after exhaustive investigation and were established throughout the greater part of southern territory. It added:

> If the contention made on behalf of the Georgia Commission in this regard were sound, then our efforts to secure cooperative action in situations such as here presented instead of bringing about that result could be made the instrument of burdening this commission with endless investigations covering the same subject matter and would result in litigation being prolonged indefinitely. (R. 93.)

At the hearings in the reopened proceedings it was shown that in contrast with the interstate scales[8] the Georgia Commission's order prescribed one scale of rates for application to both single-line and joint-line hauls, no joint-line arbitraries being provided for in any case. Up to 200 miles the Georgia standard scale is in some instances the same, and in other instances less than the 17517 single-line scale, and in all instances up to 220 miles it is less than the 17517 joint-line scale. For the longer distances the Georgia scale is in some instances the same and in some instances even higher than the prescribed interstate scales. (See Table R. 94.) Commenting on the gradations in the Georgia scale, it is said in the Commission's report that "the evidence indicates that practically all of the intrastate movements of this traffic within Georgia are less than 200 miles." (R. 95.)

Furthermore, the Georgia Commission authorized an arbitrary for short or weak lines of 10 cents only over its standard line scale, as compared with the 25-cent arbitrary allowed by the Interstate Commission. The conditions imposed by the Georgia Commission in respect of minimum carload weight were also different from those prescribed by the Interstate Commission. (R. 95.)

[8] The prior Georgia order of 1925 provided for a joint-line, as well as single-line, scale for distances under 100 miles. (R. 222.)

Supplementing the evidence as to the difference between the 17517 scales prescribed interstate and the Georgia Commission scale, exhibits were introduced showing the interstate rates established on the basis of the 17517 scales from numerous representative shipping points to representative destinations (46) in Georgia; showing the state rates from representative Georgia origins to the same destinations established on the basis of the Georgia Commission scale; and showing the amounts by which the Georgia rates differ from the 17517 basis. It was shown and, indeed, accepted as a fact that there is no transportation reason for the maintenance of a different basis of rates on intrastate traffic than on interstate traffic. (R. 110, 51.) It was shown, and, in fact, accepted by all, that there is keen competition between interstate and intrastate shippers for the Georgia markets (R. 95) and between interstate and intrastate shippers for the markets in other states in southern territory (R. 627). In addition to the competition between materials of the same kind, there was the consideration "in the building of roads, clay gravel, crushed stone, slag, and washed gravel compete with each other, in that the choice of one for a particular project renders the use of the other practically unnecessary." (R. 17.)

The commodities involved "are among the lowest valued offered for transportation." (R. 17.) Their very low value "makes the cost of transportation a most vital matter * * *." (R. 52.)

"In the price to the consumer the cost of transportation is a heavy factor." (R. 53.) From which it follows that it is particularly true of this traffic that a basis of charges favoring intrastate shippers must vitally prejudice interstate shippers competing with Georgia producers in Georgia markets. Furthermore, the commodities are of the bulky variety to which the railroads must now look for much of their traffic. They are used chiefly in the building of highways and in concrete construction work. The programs of the States in southern territory for improved highway construction have called for progressively increasing consumption thereof. During the year 1924 Class I railroads originated in southern territory, exclusive of the Pocahontas region, 23,700,740 tons of such commodities, which tonnage was exceeded only by that of forest products and of bituminous coal. (R. 17.)

The Commission's report, following the further hearings, found that the Georgia state rates "*to the extent that they are lower,* distance considered, than the interstate rates" result and will result in undue preference of interstate shippers and in undue prejudice to interstate shippers, and unjust discrimination against interstate commerce. Its further finding was that *said* undue preference and undue prejudice and unjust discrimination can and should be removed by the establishment and the maintenance of intrastate rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate traffic between

points in Georgia, and from points in other states in southern territory, except Florida, to points in Georgia, not exceeding the scale heretofore found reasonable in these proceedings for said interstate transportation. (R. 110, 111.) With its report the Commission entered an order for the carrying out of said finding. (R. 115.)

The Commission made similar findings and order in the complaint proceeding, heard with the title case, which involved the relationship as between the Georgia rates and interstate rates from Montgomery and Birmingham, Ala. (R. 111, 112, 116.) Speaking of the complainant in that case, the Commission had said:

> The Roquemore Gravel Company, complainant in No. 17763, produces sand and gravel in very large quantities at its plant at Montgomery. Testimony given for this complainant at the original hearing was to the effect that it endeavors to sell its product in as wide a territory as possible, including Georgia, and that in this endeavor it encounters actual or potential competition from producers of competing materials wherever located. * * *
>
> * * * The Montgomery complainant maintains sales organizations at Atlanta and Albany, Ga., at an approximate cost of $20,000 per year. Such agencies keep in close touch with construction programs in the State and aid in securing sales contracts for this complainant. * * * In the past

complainants' shipments to Georgia have been chiefly to Atlanta and points south thereof. Complainant now attempts, however, to market its products at all points in Georgia with the exceptions hereinafter noted.

* * * Complainant does not attempt to do business at northern Georgia points, as it is unable to compete with northern Georgia stone producers because of the amounts of freight-rate differences. With equality of both interstate and intrastate rate levels, however, complainant expects to be able to compete throughout the entire State of Georgia." (R. 102.)

Assigning various errors in the Commission's report and order of December 9, 1929, counsel for the Georgia Commission filed on January 15, 1930, petition for a rehearing before the Interstate Commerce Commission, which was denied on February 3, 1930. (R. 118.)

Proceedings in the District Court

February 18, 1930, appellant Georgia Public Service Commission filed its bill to enjoin the order of the Interstate Commission, (R. 1 to 11) with which there was consolidated (R. 162) a bill filed for the same purpose by the State Highway Board of Georgia and other interested parties. (R. 148 to 149) March 1, 1930, the lower court entered an order denying the application for an interlocutory injunction. (R. 168.) June 25, 1930, following

final hearing on the application for permanent injunction, an order was entered dismissing the bills. (R. 172.)

SUMMARY OF ARGUMENT

I. Appellants were granted full hearing as to the reasonable level of interstate rates as well as to the relationship of state and interstate rates. Their contention that the Commission failed to follow the procedure outlined in Section 13 (3) and (4) of the Interstate Commerce Act because, in reopening the proceeding as to the relationship between state and interstate rates, it did not also reopen for the purpose of again determining the the reasonable level of interstate rates, is without merit. Appellants and all parties had full opportunity to be heard on that question at the first hearings and availed themselves thereof. By the Commission's first order and voluntary extensions of its application made by the carriers, the interstate basis of rates had become established throughout southern territory except Florida and the Mississippi Valley; and it had been adopted for intrastate application within Alabama, Kentucky, Tennessee, and North Carolina. If appellants seriously contended that between the first and later hearings circumstances and conditions had substantially changed, they should have offered concrete proof.

II. The Commission's findings that the state rates unduly preferred state shippers and unduly

prejudiced interstate shippers was supported by a very full record. Discrimination was shown not only at border points but in respect of representative state origins and representative state destinations throughout Georgia. It was admitted and shown that transportation conditions, state and interstate, were substantially the same, and that a keen competitive situation existed between state and interstate shippers for the Georgia markets. The showing of injury to interstate shippers resulting from lower rates accorded competitive state shippers under substantially similar transportation conditions was aggravated by the fact that since transportation cost on this low-grade traffic was a heavy factor in the price to the consumer, differences in rates vitally affected sales. Corroborative evidence of injury was furnished by testimony showing that the difference in rates had actually closed certain Georgia markets theretofore enjoyed by some interstate shippers, and tending to show that it had prevented the securing of contracts or had influenced interstate shippers not to bid for contracts.

III. The Commission's findings in respect of undue preference and undue prejudice are particularly full and complete. There is no merit in appellants' contention that the Commission must make specific findings in respect of transportation conditions between each of the hundreds of origins and destinations intrastate as compared with those

obtaining over each of the hundreds of point-to-point routes interstate.

IV. There is substantial evidence to support the Commission's order "as one needed to avoid an undue burden on the revenues of the carriers." The first hearings showed that the traffic was of great and growing importance to the carriers, that carrier competition had resulted in a distorted rate structure, the bulk of the traffic being handled on so-called depressed rates, and that the wide general revision of rates there undertaken was for the purpose of putting an end to the burden imposed on other commerce by this situation. At the second hearings figures were given by important carriers showing for a four-month period after the Georgia rates had been established the differences between revenues actually accruing to them and their connecting carriers under the Georgia rates, and those that would have accrued if the state rates had been on the interstate basis. Tonnage figures were supplied by other carriers showing the amount of traffic moving intrastate and interstate during said period. There was evidence that at some points in Georgia there was resulting the old competitive conditions of rates depressed even below the Georgia basis.

Because of the nature of the traffic and other considerations the interstate basis of rates prescribed was low. Departures from that basis would necessarily tend to break down the general adjust-

ment, burdening other commerce, and the Commission so admonished the carriers.

V. The Commission's findings on the revenue burden feature are adequate when taken in their context and together with its other statements. There was no evidence that the prescribed rates would result in curtailment of the traffic or diversion into other than railroad channels. The Commission reviewed categorically the evidence submitted by the carriers showing the difference in revenue under the Georgia rates and the interstate rates, and set forth the results in its report. Moreover, the revenue burden feature of this case is only in part like that to which the decision in *Florida* v. *United States*, 282 U. S. 194 (upon which appellants rely) is directed. The wide adjustment of interstate rates made in the proceeding was largely for the purpose of terminating carrier competition, closely approaching rate wars. The Commission expressed its apprehension that the low rates prescribed in Georgia might bring about a general reversion to the old conditions of competitively depressed rates.

VI. The Georgia rates prescribed are definite and certain. Before ordering the carriers to establish state rates not lower than the contemporaneously applicable interstate rates, the Commission ascertained and stated in its report that the carriers, in establishing their interstate rates, had conformed to the maxima fixed in its first re-

port with certain exceptions which were to be corrected or would be automatically adjusted in application under its order. Considering the scope of the proceeding, the certainty in operation of the orders is particularly marked.

ARGUMENT

I. THE COMMISSION'S HEARINGS WERE FULL IN RESPECT OF THE REASONABLE LEVEL OF INTERSTATE RATES AS WELL AS THE RELATIONSHIP OF RATES, STATE AND INTERSTATE, THE FIRST HEARINGS HAVING BEEN DEVOTED PRIMARILY TO THAT ISSUE

It has been above shown that, following the first hearings in the proceeding, the Commission prescribed the reasonable level of interstate rates. At that time it issued no order in respect of Georgia rates, it being its hope that the State would itself authorize or order respondent interstate carriers to establish state rates justly related to the level of interstate rates found reasonable and lawful by the Commission. This procedure conformed to the spirit of the suggestion in *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R.*, 257 U. S. 563, 591, of cooperation between the Interstate Commission and the State Commissions. Appellants contend, however, that the Commission failed to follow the procedure laid down in section 13 (3) and (4) of the Act because, in reopening the proceeding in respect of the relationship between the state and interstate rates, it did not also reopen for the purpose of again determining the reasonable level of interstate rates.

In answer to this contention the Commission's second report states:

> As heretofore stated, the 17,517 scales were recently prescribed in these proceedings for interstate application after an exhaustive investigation and are now applied on interstate traffic throughout the greater part of southern territory. The only reason that no findings were made for the future or order entered in the original proceedings concerning the Georgia intrastate rates was because this commission, desirous of fostering and encouraging the spirit of cooperation between it and the State commissions, "felt that the Georgia commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved." The Georgia commission has authorized a revision. Respondents and others complained and are here contending that this intrastate revision is so out of harmony with the approved interstate revision that it has brought about an unlawful relationship. For the purpose of determining whether or not this is the fact, the proceedings were reopened and the further hearing had. The scope of the further hearing was properly limited to the question indicated. If the contention made on behalf of the Georgia Commission in this regard were sound, then our efforts to secure cooperative action in situations such as here presented instead of bringing about that result, could be made the

> instrument of burdening this commission with endless investigations covering the same subject matter and would result in litigation being prolonged indefinitely. The contention is without merit. (R. 93.)

In disposing of this same contention of appellants, the Lower Court, among other things, said:

> A full hearing was undoubtedly given prior to the order of January 21, 1927. * * * New interstate rates were in that very proceeding established as reasonable, and the opinion expressed that as no transportation differences existed the state rates ought to conform in order to escape future discrimination, but no positive order of conformity was then issued in order that the state commission might work the state rates out for itself. * * * Ordinarily nothing would then be left for examination except whether the new state rates did so conform to the new interstate rates as to escape discrimination. * * * If the Georgia Commission had any definite proof of altered conditions, it should have been concretely offered. We discover no abuse of procedure in reaching the order of December 9, 1929, in the evidence now before us.

We believe that nothing need be added to what was said by the Commission and the Lower Court with respect to the procedural objection made by appellants.

Appellants apparently do not assert that there was not substantial evidence adduced at the first

hearing in support of the Commission's order prescribing rates for interstate application, except that they allege that the record did not warrant the differential prescribed for joint-line hauls. However, the scope and nature of the general evidence will be briefly described, together with a more detailed statement of the evidence supporting the joint-line differential.

The evidence before the Commission was of the kind upon which it usually reaches its rate decisions. There was a large volume of material, furnishing rate comparisons on the same or similar commodities in the same territory and in other territories. There were the scales proposed by the carriers (R. 23, 275, Ex. 1), the proposed scales of the Georgia Commission (R. 602, Ex. 244, consisting of 28 pages), the proposed scales of the complainants (R. 279, 253), and the proposed scales of certain intervening shippers (R. 554–560). In their said exhibits, or other exhibits,[9] these parties furnished comparisons with other scales on the same or other low-grade commodities in the same or in other territory. (R. 53.) They also furnished exhibits showing the prevailing level of the rates which in fact moved the traffic in the territory. The history of the rates was given by testimony and exhibits. (R. 319–343.) Estimates of ton-mile and car-mile earnings were submitted by

[9] Carriers' exhibits 34–81, complainants' exhibits 3–27, Georgia Commission's exhibit 244.

the carriers under their proposed scales and under the scales of the Georgia Commission. (R. 43, 349, Ex. 57.) Testimony as to the values of the commodities were given by various producers. (R. 19, 301.) Evidence as to the tonnage transported, its percentage to other traffic, and the revenues derived therefrom was supplied. (R. 17, 320, 435.) There was affirmative testimony that transportation conditions were substantially the same throughout the territory and also a stipulation of the parties to that effect. (R. 276, 246, 256, 259, 311, 50, 51.) A reading of the first report will show that the parties furnished the Commission with an unusually comprehensive record.

1. Joint-line differentials

The reason for prescribing a rate differential for hauls made over joint-line routes was, of course, to give effect to the additional costs incidental to any interchange at junction points.

Appellant's assertion (Br. 83) that there was no evidence to warrant the prescribing of a joint-line scale is not borne out by this record. While it is true that cost studies or tests were not made at each of the junctions involved in the territory, still there was the fact that joint-line arbitraries were proposed by the carriers, and there was evidence and testimony offered by the proponents of kind and character that might be reasonably expected in the case. (R. 345 to 351.) Exhibit 51 compares the joint-line scale proposed by the carriers with all of

the joint-line scales applicable on the commodities in Southern territory. Exhibit 52 shows, in cents per ton for representative distances, the amounts by which joint-line rates exceed single-line rates on classes and on various commodities under the carriers' proposed scales and under mileage scales prescribed in 1921 by the Georgia Commission. Exhibit 53 shows, in cents per ton for representative distances, the amounts by which joint-haul rates exceed single-line rates on various commodities under the mileage scale submitted by the carriers in 1921 to the Alabama Commission and under mileage scales prescribed by that Commission. Exhibit 54 shows comparison of single and joint-line scale of lumber submitted by the carriers to the Georgia Commission compared with scales used in revising rates on lumber from southeastern to Carolina territory and between points in Carolina territory. Exhibit 55 contains excerpts from decisions of the Interstate Commission in cases dealing with the question of joint-line differentials. Exhibit 56 shows the extent of the movement of these commodities over various carriers in Southern territory for year 1924 and the average load. It further contrasts this movement in the south with movements in other districts of the United States, showing the great importance of the traffic in the south. Exhibit 57 shows the carriers' proposed scales and the Georgia Commission's scales applicable for single and joint-line hauls on these commodities and ton-mile earnings under each.

In presenting these exhibits the witness described and discussed them, particularly the showing in respect of ton-mile earnings. He also expressed his views as to the need of a joint-line scale as follows:

> The expense of handling this traffic over two or more lines is greater than the expense of a one-line haul. The Georgia Commission's proposed single-line scale is, we think, too low, when the entire revenue accrues to the line performing the single-line haul. But when we get beyond 100 miles they allow no addition when the service has to be performed by two or more lines, although the expense is greater than for the single-line service. (R. 346.)

A further exhibit in respect of joint-line differentials was introduced on behalf of certain Georgia producers, which is described in the testimony. (R. 569, 570.) Among other things, the witness said:

> In regard to the two-line differential in central states territory, as a general proposition, *unless the rates are too low,* there is no distinction made as to single and joint lines. * * * In the Pennsylvania Case, while no issue was made as to the two-line rates, the Commission did adopt a 20-cent differential for joint-line hauls. In the western states it is the usual practice not to add a differential for two-line hauls, but to take a single percentage of the single-line rate and add them together to arrive at the

> basis of joint hauls. There have been various decisions of the Commission in the western territory fixing a differential of 20 cents per ton, and it is my opinion on the joint-line haul rates that there should be some arbitrary added to the single-line rate for all distances in order to cover the cost of interchange between the two lines. That would apply whether it was 20 miles or whether it was 200 or 2,000. It is just as much a fixed charge as a terminal charge at the original points and at the destination.

In addition to the record evidence, it is certainly within the field of the Commission's expert knowledge that additional costs are involved in joint-line hauls.[10] There is no dispute in the evidence but that they are incidental to such hauls, the question being merely as to whether they should be given effect by a joint-line differential or in a slightly higher single scale, applicable to both kinds of hauls. The rate expert of the Georgia Commission testified:

> It is correct to say that in prescribing rates on sand and gravel in its first order,

[10] The same engine and train crew do not go through. Cars are switched to interchange tracks and perhaps held there for a time. There is more bookkeeping, the part of each carrier in the transaction having to be carried through in its accounts and interline settlements. *Brush Creek Co.* v. *L. & N. R. R. Co.*, 39 I. C. C. 449. Cost tests to determine average amount of switching at each and every junction, average time cars held idle on interchange tracks, average loss of labor time due to changing train crews, would seem to be impracticable in a case of this kind.

effective April 1, 1925, the Georgia Commission did provide for joint-line differentials under 100 miles, but when these rates were again revised, effective May 1, 1928, the single-line rates were generally increased and all joint-line differentials eliminated. (R. 740.)

The method of giving effect to the additional costs by a somewhat higher single rate for both single-line and joint-line movements has great practical advantages, particularly in the matter of simplicity of tariff construction, and the Commission has regarded it as warranted where the traffic is of higher grade. That was in fact done in the *Alabama Fertilizer case*, No. 513, recently argued before this Court, and there the complaint of the Alabama Commission was that the adoption of a single scale for both single and joint line hauls forced "shippers using only a one-line haul to pay more than the reasonable rate therefor in order that another shipper may use a joint-line haul at less than the reasonable rate therefor." But sound reasons for the distinction existed; in that manufactured fertilizer materials are of decidedly higher grade than sand, gravel, slag, and the like. The latter traffic is of the lowest grade and where, as here, the whole haul is short, and consequently the revenue to be divided between the carriers is small, compelling reasons are furnished for giving effect to the added costs in the rates made over joint lines.

In this connection the Commission said in the instant case:

> * * * In the case of the commodities under consideration, however, there is perhaps more basis for joint-line arbitraries than in the case of any other form of traffic. The very low value of these commodities makes the cost of transportation a most vital matter, and it may well be that even the slight increase in rate level over the single-line routes which the elimination of joint-line arbitraries would entail ought to be avoided. Undoubtedly the greater proportion of this traffic moves over such routes. At all events we have reached the conclusion that in the case of these commodities joint-line arbitraries may reasonably be permitted, but should be of lesser amounts and disappear at an earlier stage of the scale than the carriers propose. But this should not be construed as an indication that we favor joint-line arbitraries in the case of traffic of higher grade. (R. 52.)

The Commission in its final report, referring to the consideration given by it to this question in its earlier report, said:

> * * * but after mature consideration, we there reached the conclusion that on this low grade traffic joint-line arbitraries should be prescribed. It might also be added that most of the interests represented there advocated the prescription of joint-line arbi-

> traries. The fact is we have never prescribed for general application in any territory one scale for both single-line and joint-line hauls of this traffic. (R. 106.)

Thereafter the Commission went on to emphasize that the real question was whether the Georgia order had brought about a rate relationship which was unduly prejudicial of interstate shippers and unjustly discriminatory of interstate commerce. If, within Georgia, the single-line scale [11] is to be allowed for hauls made over joint lines, then, to avoid undue prejudice against interstate shippers, it would be forced on the interstate rate structure. But, as said in *The Shreveport case*, 234 U. S. 342, 354, in respect of state and interstate rates charged by interstate carriers:

> * * * the power to deal with the relation of the two kinds of rates, as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carrier's interstate and intrastate charges

[11] It should further be kept in mind that the Commission's single-line scale is not, as in the *Alabama Fertilizer Case*, a single scale made somewhat higher because for application over both single and joint-line hauls; also that even for single-line hauls the Georgia scale is only in part the same as the Commission's single-line scale. The Federal Commission has fixed the standard for single-line and joint-line rates. There is no more reason why it can not control the minimum level of the latter than of the former. And it must have that power if it is to prevent disruption of the rate structure on this traffic and preserve a lawful rate relationship.

> without directly interfering with the former, unless it simply follows the standard set by Federal authority.

In respect of the contention made by Georgia interests that single-line-mileage was preponderant from certain important interstate origins, the Commission referred to rebuttal evidence (R. 806 to 813) and said:

> It is shown that from Alabama City the joint-line scale would apply to 5,683 miles within Georgia as compared with 1,024 miles to which the single-line scales would apply. From Montgomery the ratio would be 4,695 joint-line and 1,980 single-line mileage, and from Birmingham 4,581 joint-line and 2084 single-line. (R. 107.)

The witness introducing said rebuttal evidence, after explaining in substance that adversary witnesses regarded as single-line movements all possible mileage where the origin and destination were on the same railroad, no matter how roundabout the route, had said (R. 806):

> In my exhibit I set forth the mileage within Georgia to which the joint-line arbitrary is in fact charged in connection with interstate movements from Alabama City, and for the purpose of that exhibit I checked out the specific rates from Alabama City to every point in Georgia and found whether they were made on single-line or joint-line scale. (R. 806.)

II. THE COMMISSION'S ORDER PRESCRIBING RATES WITHIN GEORGIA FOR REMOVAL OF UNDUE PREJUDICE AGAINST INTERSTATE SHIPPERS WAS WITHIN ITS AUTHORITY AND WAS SUPPORTED BY A COMPREHENSIVE RECORD

1. The evidence is exceptionally conclusive in that it includes, not only the very full record which enabled the Commission to adjust the interstate rates in the territory involved and upon which it could at that time have established the state rates, but also includes evidence adduced at hearings held after establishment of the adjusted interstate rates, and of the state rates under the Georgia Commission's order of 1928

The purpose of the Commission's order prescribing rates within Georgia was twofold: (1) to remove undue prejudice against interstate shippers of the same commodities, and (2) to remove unjust discrimination against interstate commerce as a whole.[12] Intrastate rates imposed upon interstate carriers by state authority, which cause either form of such discrimination warrant entry by the Interstate Commission of an order for its removal. *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R.*, 257 U. S. 563, 579.

The sweep of the Commission's order is statewide,[13] but it is in respect of rates on a particular class of commodities, namely, sand, gravel, and allied materials, exacted from producers, competing

[12] The revenue burden imposed upon other commerce of interstate carriers by preferentially low state rates.

[13] To the extent that the state rates were lower distance considered than the interstate rates.

with each other for the Georgia markets in those materials. If the rates charged one producer are improperly related to the rates of his competitors, there exists discrimination in fact, and this is true, not only as to points of consumption within Georgia where he is actually doing business, but also as to all points of consumption at which he would be able to compete for business under properly related rates. Such discrimination in fact is not of course justified at law by reason of the preferential rates being between points of production and consumption within the same State. The question is as to the correctness of the premise that the rates are improperly related, and that question is one of administrative fact.

The importance of territorial, rather than piecemeal, adjustment of rates on particular commodities has become progressively clearer with each year's work of the Commission. It will be seen that the removal of discrimination as between two rival points of origin by the raising, or lowering, of the rate from the one origin or the other may place the changed rate out of proper alignment with a rate from a third origin. A further proceeding correcting that situation may be the occasion for complaints in respect of still other rates. Of course, distance from market is a natural disadvantage just as nearness to market is a natural advantage. In the adjustment of rates both must be given recognition, within reasonable limitations.

But it must be kept in mind that distance is not an exact yardstick for the measure of rates. It has long been recognized by the carriers and regulatory bodies that the unit (per car-mile) cost of transporting and handling long-haul traffic is less than for the shorter hauls, this being due to the fact that in such longer movements the switching and other expense at origin and destination and the overhead and other fixed costs are spread against more miles of revenue-producing business. This is not to say, however, that the only nether limitation on the rates for long-haul traffic is that it must not be noncompensatory. It must yield a proper profit—all elements considered. The problem is essentially one of judgment and distance scales, such as are here involved, are designed to give effect to all elements. Many distance scales have been initiated by the carriers as well as prescribed by the regulatory bodies, state and federal. (R. 20.)

As above outlined, the Commission, following the first hearings in its proceeding, fixed maximum distance scales for interstate application between points in Georgia and between points in Georgia and points in other States in Southern territory, except Florida. Rates under these scales became effective October 1, 1927. And there followed the voluntary extensions of said scales by the carriers and the adoption thereof by the States heretofore mentioned. At the time of its first report, however, the Commission made no order

in respect of Georgia intrastate rates, but expressed the belief that the Georgia Commission would itself adjust state rates in harmony with the interstate adjustment. The Georgia Commission did not respond to this suggestion, but instead prescribed a different scale of rates under which intrastate rates were established, effective May 1, 1928. Upon petition of the carriers the proceeding before the Interstate Commission was reopened and evidence introduced of the rate relationship under the conflicting scales and of actual conditions resulting therefrom.

When entering its final order, therefore, the Commission had the benefit, firstly, of the full record which had enabled it to adjust interstate scales in the general territory involved, and which led it to express the opinion, in substance, that as no transportation differences existed, the State rates ought to conform thereto. (R. 164.) As said by the lower court in the reopened proceeding after the State rates had been established, ordinarily nothing would be then left for examination except whether the new State rates did so conform to the new interstate rates as to escape discrimination. (R. 165.)

Secondly, the Commission had the benefit (unusual in these cases) of evidence introduced after establishment of the adjusted interstate rates and the establishment of the different state rates, which furnished it with data as to the departures in State

rates from the basis which it had found reasonable under transportation conditions prevailing in the territory, as to the actual preferences in rates resulting to intrastate shippers and as to actual conditions growing out of the situation.

2. The evidence of undue preference of intrastate shippers and undue prejudice against interstate shippers is state-wide in scope

In *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R.*, 257 U. S. 563, involving a horizontal increase in intrastate passenger fares ordered by the Commission this court said at page 579:

> The report and findings of the Commission undoubtedly show that the intrastate fares work an undue discrimination against travelers in interstate commerce and against localities * * * in typical instances numerous enough to justify a general finding against a large class of fares. * * * Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute.

The Court has thus recognized the impracticability in a case of this kind of securing specific proof of unlawfulness of each of the literally thousands of point-to-point intrastate rates in its relationship to each of the thousands of point-to-point interstate rates. This recognition is of great importance, for from the beginning the outstanding purpose of the

Act to Regulate Commerce has been to do away with discriminations as between persons.[14] The *Shreveport Case*, 234 U. S. 342, 356. And, if that purpose is not to be frustrated, a method must be pursued by which the task may be performed. As said in *New England Divisions Case*, 261 U. S. 184, 197, in respect of the fixing of divisions of joint rates:

> * * * The number of carriers which might be affected by an order of the Commission, if the power granted were to be exercised fully, might far exceed six hundred; the number of rates involved, many millions. The weak roads were many. The need to be met was urgent. To require specific evidence and separate adjudication in respect to each division of each rate of each carrier would be tantamount to denying the possibility of granting relief. * * *
>
> For many years before the enactment of Transportation Act, 1920, it had been necessary, from time to time, to adjudicate comprehensively upon substantially all rates in a large territory. When such rate changes were applied for the Commission made them by a single order; and, in large part, on evidence deemed typical of the whole rate structure. * * *

[14] As distinguished from the "revenue burden" discrimination, in respect whereof business rivalry is not necessarily an element, discriminations between competing shippers and localities has the effect of stifling the business and commerce of the country.

In the *Wisconsin Railroad Commission case, supra,* the showing of typical instances of undue prejudice against persons and localities was confined to border points and, while the decision recognized that these instances justified extending the order to include all fares from all points in the State to border points it, nevertheless, held that the showing there made did not justify the extending of the order to include "fares between all interior points [15] although neither may be near the border and the fares between them may not work a discrimination against interstate travelers at all" and "when it is clear that this would include many rates not within the proper class or the reason of the order." (Page 580.) In short, the holding is that, where a Commission order rests upon typical evidence, its scope should naturally be limited to matter as to which the evidence is typical or representative. There is nothing in the decision that holds, or even indicates, that an order which rests upon undue prejudice against interstate shippers must be restricted to rates to and from border points. The showing of typical instances there made happened to be of discrimination at border points. But in the instant case, as will be shown, discrimination is not confined to border points. Producers at interior points, as well as border

[15] The order was upheld in its state-wide application on the finding and showing of unjust discrimination against interstate commerce as a whole—the so-called revenue burden cast upon other commerce by unduly low state rates.

points, are in competition with interstate shippers for the Georgia markets. Competition of interstate producers is in some instances potential rather than active, but it will not be urged that, because now they are altogether shut out of some Georgia markets by improperly related rates, they are not subjected to undue prejudice. As was said in *Nashville Ry.* v. *Tennessee*, 262 U. S. 318, at page 323:

> But a lower rate may result in giving to a single quarry within the State all of the governmental business, so that competing quarries and localities within or without the State, or interstate traffic would be prejudiced.

Competing producers of any commodity are practically always at varying distances from markets. Proximity to market is, as above said, a natural advantage which for transportation reasons should, within reasonable limitations [16] be given recognition in rates. On the other hand, the more distant producer is entitled to properly related rates. *Jefferson Island Salt Co. et al.* v. *United States*, 6 F (2d) 315; *Gulf Ports Preference Cases*, 42 F. (2d) 281; *Lake Cargo Coal Cases*, 139 I. C. C. 367. The shipper who looks to markets in other States is more

[16] As contrasted with the comprehensive rate groupings (blanket rates) often maintained by carriers (*Gulf Ports Preference Case*, 128 I. C. C. 349, 387), distance scales, as heretofore shown, take close account of transportation costs, thereby giving more detailed recognition to the natural advantage of the nearby producer.

often than not a large-scale operator with low unit costs of production, or the commodity to be marketed may be a by-product of his main operations (R. 44, 45, 637) or it may be surplus after supplying nearer markets. (R. 629.) And, on the other hand, the nearby shipper may be a small-scale producer, lacking capacity to fully supply the market. Any such circumstances may and do enable a distant producer to absorb freight differentials in competition with producers nearer a market. (R. 44.) His right to properly related rates can not be denied him because he can not always do so and make a successful bid for the contract. And, of course, interstate shippers may be nearer to some markets than certain, or even all, their rival intrastate competitors.

The Commission's report contains a table (R. 94) comparing the Georgia distance scales with the 17517 scales of the Interstate Commission. It will be remembered that the latter prescribed somewhat higher scales for joint-line routes than for single-line routes, whereas the Georgia Commission prescribed one scale of rates for application over both kinds of routes. Up to 200 miles the Georgia scale is in some instances the same as, and in some instances less than, the interstate single-line scale; in all instances it is less than the interstate joint-line scale. For distances beyond 200 miles the Georgia scale is in some instances the same as, but generally speaking higher than, the interstate single-line scale; in most instances it is less than

the interstate joint-line scale. The Commission's report states that:

> The evidence indicates that practically all of the intrastate movements of this traffic within Georgia are less than 200 miles. (R. 95, 667.)[17]

This statement of the Commission should be kept in mind in considering those gradations in the Georgia scale appearing favorable to interstate commerce. And, as just above said, up to the 200-mile distance the scale is in some instances the same as, and in some instances lower than, the interstate single-line scale; and in all instances it is lower than the interstate joint-line scale.[18]

a. Preferences shown by the rates as established, and resulting detriment to interstate shippers

Referring to exhibits comparing interstate rates and intrastate rates as actually established under the interstate and Georgia scales, respectively, the Commission said:

> Exhibits were introduced by respondents showing the interstate rates from numerous representative shipping points to representative destinations in Georgia,

[17] Among other things, note that distances dealt with in testimony and exhibits of Georgia Commission's rate expert are under 200 miles. (R. 746–753; exhibits 169–B and 176–B.)

[18] The Georgia order in effect prior to the prescription by the Interstate Commission of single-line and joint-line scales had likewise provided for two scales up to 100 miles. (R. 222.)

which rates are on the basis of the 17,517 scales; rates from representative Georgia origins to the same points, which are on the basis of the Georgia Commission scale; and the amounts by which the said Georgia rates differ from the 17,517 basis. (R. 96.)

Exhibits of record fully bear out this statement of the Commission.[19] Summed up, the showing made was that, as to single-line hauls, there were many instances where the intrastate rates were the same as, and for the longer hauls even higher than,

[19] Among others: Exhibit 100-B, of 48 sheets, introduced by General Freight Agent of Coast Line, shows to 46 Georgia destinations, widely scattered throughout the State, distances and rates from interstate shipping points in Alabama, Tennessee, and South Carolina, and distances and rates (both under Georgia basis and interstate basis) from numerous Georgia shipping points (R. 623 to 625); exhibits introduced by Southern Railway show to stations on its lines throughout Georgia distances, routes, and rates from Chattanooga and Macon, Tenn., Birmingham and Montgomery, Ala., and Columbia, S. C., on the one hand, and distances, routes, and rates (both under Georgia basis and interstate basis) from various Georgia origins on the other hand; other exhibits of the Southern Railway show similar information to stations in Georgia on the lines of its connecting carriers, both short-line and trunk-line carriers, from specified interstate and state shipping points (R. 652 to 668); evidence introduced by Seaboard Air Line shows, for actual movements of slag, sand, and gravel, for six months ended June 30, 1928, from Alabama producing points (chiefly the Birmingham and Montgomery districts) to destinations in Georgia on its own or other lines, distances and routes, and rates and revenues based on actual interstate rates compared with rates and revenues for like hauls intrastate on Georgia basis; and in separate exhibits shows, for actual movements of crushed stone (competes with slag, gravel, and sand) during the same

the interstate basis and many instances where they were from 5 to 10 cents under that basis, depending, of course, upon whether the distances fell within those gradations of the Georgia scale which are the same as the single-line interstate scale, or within those which differ from that scale; that, as to joint line-hauls, the intrastate rates were lower throughout than the interstate basis by amounts ranging from 5 to 25 cents, except that, for some few of the long hauls, they were the same as the interstate

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period from Oglesby, Ga., to Georgia stations on the lines of the Seaboard or its connections; distances and routes, and rates and revenues based on the then actual Georgia rates compared with rates and revenues that would have accrued for like hauls from interstate shipping points based on interstate scales; still other evidence of the Seaboard compares in the same exhibits the present rates and revenues on actual movements of slag, sand, and gravel from Alabama origins to Georgia destinations with rates and revenue on actual movements of crushed stone from Ladds, Ga. (R. 674 to 681); exhibit of Birmingham Slag Company shows, with respect to projects on which it had bid and lost to competitors in Georgia, distances, rates, and routes from Ensley, Ala., to numerous Georgia destinations, as compared with distances, routes, and rates (both under Georgia basis and interstate basis) from the successful Georgia producing points (R. 725 to 728). Attention is also called to the testimony and exhibits therein mentioned of other respondent carriers (R. 681 to 693), and to exhibits introduced by appellant Georgia Public Service Commission, showing rates from numerous Georgia producing points to Georgia destinations, both on basis of its order and the interstate basis (R. 745 to 753), and to the admission or stipulation by said commission that there is "very keen competition between the producers of all the materials at the principal markets, both inter and intra state." (R. 772 to 773.)

basis. As will hereinafter be shown, the Commission's findings and order dealt only with those rates that were lower than the interstate rates, and as to those it necessarily follows that state producers were shown to be enjoying a preference. The "undueness" thereof will be hereinafter discussed.

In its report the Commission set forth a table of illustrative data taken from said exhibits. For example, it is shown that from Beverly, S. C., to Gainesville, Ga., a distance of 84 miles, the rate is $1.00, while from Elberton, Ga., distant 87 miles, the rate is 90 cents, or 10 cents under the Beverly rate and 10 cents under the interstate basis. This difference is about 30 per cent of the average selling price of sand and clay gravel. Both hauls are single line. From Montgomery, Ala., to Columbus, Ga., a distance of 95 miles and single-line route, the rate is $1.00, while from Georgetown, Ga., a distance of 90 miles over a joint-line route, the rate is 90 cents. This rate established over a joint line is 10 cents less than the interstate basis for single-line hauls and 25 cents less than the applicable joint-line basis, the preference being about 70 per cent of the average selling price of sand and gravel. The average prices of crushed stone, washed gravel and slag (if crushed and screened) are higher, but still the rate preference will be found to bear a large proportion to the selling price. (Table of prices. R. 19.)

The Commission stated that the commodities involved "are among the lowest valued offered for

transportation" (R. 17); that their very low value "makes the cost of transportation a most vital matter" (R. 52); and that "in the price to the consumer the cost of transportation is a heavy factor" (R. 53). Improperly related rates on any commodities result, of course, in preference and prejudice as between rival producers or dealers, but it would seem to be particularly true of this traffic that rates favoring state shippers must vitally prejudice competing interstate shippers. The state line affords no justification for compelling interstate carriers to grant such preference.

Of course, in order to constitute a rate preference, the difference in rates must be coupled with a showing of substantially similar transportation conditions; and, in turn, a rate preference, even as so established, is not necessarily undue. An accompanying showing, however, of a keen competitive situation in and of itself would seem to lend substantial support to a finding of "undueness."

It was shown and accepted as a fact that operating and transportation conditions throughout southern territory, except Florida, were similar and that there was no transportation reason for a different basis of rates within Georgia than on interstate traffic. (R. 256–259, 50, 51, 59, 110, 626, 682, 745.) [20]

[20] There was testimony to this effect and the parties, including the Georgia Commission, so stipulated. (R. 256–259.) Coupled with the fact that there was nothing to rebut this testimony and stipulation, it should be kept in mind that operating and transportation conditions in southern

With respect to the competitive situation, the General Traffic Manager of the Coast Line said:

> From one end of our railroad to the other end; we find on these commodities that the intrastate producers are competing with the interstate producers. For example, North Carolina stone moves into Virginia in competition with Virginia producers; Virginia stone and gravel moves into North Carolina in competition with North Carolina producers; North Carolina stone, gravel, and sand moves into South Carolina in competition with South Carolina producers; the South Carolina products compete with similar products from North Carolina and Georgia, and to some extent with Alabama, Tennessee, and Virginia; the Georgia producers compete with Alabama, Tennessee, South Carolina, North Carolina, and Florida, and so on. (R. 627.)

The Commission's report states that it is admitted by all "that there is keen competition between the respective producers and that interstate and intrastate shippers are in direct competition with each other"; (R. 95) and as bearing this out appellant Georgia Commission itself admits that there is "very keen competition between

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territory have of recent years been almost continuously before the Commission. *Southern Class Rate Investigation*, 100 I. C. C. 513, 128 I. C. C. 567; *Southern Fertilizer Investigation*, 113 I. C. C. 389; *Southern Cement Rates*, 132 I. C. C. 427, 155 I. C. C. 339; *Southeastern Sugar Investigation*, 132–477, 142 I. C. C. 459; *Brick & Clay Products in the South*, 88 I. C. C. 543, 155 I. C. C. 730.

the producers of all the materials at the principal markets, both inter and intrastate." (R. 772, 773.) In addition to the competition between materials of the same kind it was shown "that in the building of roads, clay gravel, crushed stone, slag, and washed gravel compete with each other, in that the choice of one for a particular project renders the use of the other practically unnecessary." (R. 17, 630, 772, 637.) The evidence in respect of one large interstate producer alone is that it is an active or potential competitor throughout the State of Georgia, maintaining a sales organization "which keeps in close touch with the work in the entire State of Georgia at a cost of about $20,000 a year." (R. 630.) Speaking of that producer, the Roquemore Gravel Company located at Montgomery, the Commission said:

> * * * In the past complainants' shipments to Georgia have been chiefly to Atlanta and points south thereof. Complainant now attempts, however, to market its products at all points in Georgia with the exceptions hereinafter noted. * * * Complainant does not attempt to do business at northern Georgia points, as it is unable to compete with northern Georgia stone producers because of the amounts of freight rate differences. With equality of both interstate and intrastate rate levels, however, complainant expects to be able to compete throughout the entire state of Georgia. (R. 102, 633, 635.)

As heretofore said, a rate difference, accompanied by a showing of similar transportation conditions, establishes preference and prejudice. The further showing of a keen competitive situation, in and of itself, would seem to furnish substantial support for a finding of "undueness," namely, of detriment resulting to one shipper by a lower rate accorded his rival under similar transportation conditions. There is evidence in this record that the lower rates given Georgia producers have caused interstate shippers to lose construction contracts (R. 726, 727, 724, 647) and, indeed, that they have altogether closed the Georgia market to some producers who had been doing business in the State (R. 639–641, 644). For example, a witness for the Ellenton Gravel Company (Ellenton, S. C.), testified:

> I would like to state that there have been one or two changes made in the rates that curtailed our business in Georgia quite a little but the changes made effective May 1st (1928) have put us out of Georgia. We had orders at that time and they wired us to cancel within 24 hours, and we have been out of the business since that time in Georgia. * * *
>
> I have been shipping to Georgia for nearly 20 years, but I am totally out of the State of Georgia now, and consequently my company has been suffering a loss, and we haven't done anything since May 1st. (R. 640, 641.)

But the Commission could hardly be accused of arbitrariness if the evidence, persuading it that rate preferences caused detriment, should fall short of showing "closed markets," or that failure to secure contracts was absolutely attributable to rate differences. (R. 631 to 636.) For example, the situation above shown, in respect of the business in Georgia of the Roquemore Gravel Company [21] may be divided into 3 parts. The Company is actually doing business at Atlanta and points south thereof. As to the balance of the State, it is attempting to do business at all points except in Northern Georgia. In Northern Georgia it expects to do business, "with equality of both interstate and intrastate rate levels." It can not be said that this company is subjected to undue prejudice only as to the portion of the state from which it is actually excluded.

The question as to whether rate prejudice is undue is not susceptible to precise proof; it is one of judgment, necessarily relegated to the administrative field. Standing alone, the evidence introduced by the Georgia Commission and its admissions go a long way toward affording substantial support for the Interstate Commission's finding of undue prejudice. Exhibit 161 B, introduced on behalf of the Georgia Commission, is a map of Georgia and adjacent states. There are shown in colors all the railroads in Georgia and those extending to

[21] This Company is a large-scale producer, enabling it to absorb rate differentials and reach distant markets even beyond Georgia. (R. 629, 635.)

Montgomery and Birmingham, Ala., Chattanooga, Tenn., and Columbia, S. C. There are also shown in colors the location of some of the principal producing points in Georgia of sand, gravel, and crushed stone. (R. 732.) In addition to this map there is the comparative statement introduced by the Georgia Commission showing distance rates, lower state than interstate, and finally its stipulation that its own investigation had shown very keen competition between the producers of all the materials at the principal markets, both inter and intrastate, the producers in Georgia coming in direct competition with the producers in Alabama, Tennessee, and South Carolina. (R. 772.)

Certainly the showing of undue preference and prejudice as between persons and localities made in this record is not, as in the *Wisconsin Railroad Commission Case, supra,* confined to typical instances at border points. The showing of competition blankets the State. And, as has just above been said with respect to the Roquemore Company, the Commission's administrative judgment that detriment results would not seem to be rendered arbitrary either because, on the one hand, a producer is still able to do business in parts of the State, or because, on the other hand, it is unable under the present rate adjustment to do business in other parts of the State.[22]

[22] Note that the Roquemore Company is doing business in States beyond Georgia under interstate rates established on the 17517 scale. (R. 635, 629.)

3. The Commission's findings in respect of undue preference and prejudice between persons and localities in state and interstate commerce are complete

Appellants attack the sufficiency of the Commission's findings of undue preference and prejudice as between persons and localities,[23] on grounds which appear to resolve themselves chiefly into the one complaint that the findings do not deal specifically with each discrimination resulting from each state rate. Appellants' brief sets forth the Commission's ultimate finding and some of the underlying findings, which need not be repeated here. It fails to mention the Commission's statement that—

> Exhibits were introduced by respondents showing the interstate rates from numerous *representative shipping points* to *representative destinations* in Georgia * * * rates from *representative Georgia origins* to the same points * * * and the amounts by which the said Georgia rates differ from the 17517 basis. The following data, taken from these exhibits and corrected to conform with our tariff check, are illustrative. (R. 96.) (Italics ours.)

The Commission then sets forth a table[24] of data illustrative of the rate disparaties shown by the

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[23] Often referred to as Section 3 findings to distinguish them from the finding of unjust discrimination against interstate commerce as a whole, the so-called revenue burden finding.

[24] Appellants do mention this table and, among other things, assert there is not a word of evidence to show actual

exhibits referred to. It thereafter points to a great deal of other evidence, some of which is corroborative or complementary and other of which is well nigh complete in itself. It states that circumstances and conditions affecting the intrastate and interstate transportation are substantially similar, (R. 100) but, as pointed out by appellants (Br. 59), it does not make specific finding of transportation conditions between each origin and destination intrastate as compared with transportation conditions between each origin and destination interstate. Neither does the Commission's ultimate finding of undue preference and prejudice attempt to state separately its determination in respect of each of the thousands of rate comparisons involved.

The decision in the *Florida Log Case*, 282 U. S. 194, repeatedly referred to by appellants, contains no holding that such findings are necessary—nor would they, in our opinion, be within the spirit and purpose of that decision.

a. Appellants' assertion that the findings of the Commission constitute "distance" the only element entering into transportation conditions is disputed by other of their own statements and argument.

Appellants point to the wording of the Commission's ultimate finding that state rates should be no lower "distance considered" than interstate

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movements. They overlook the fact that the rates are between "representative shipping points" and "representative destinations." And, in this connection, see list of shipping points stipulated by consent of parties. (R. 63 to 66.)

rates, and say "We assume these findings should be strictly construed." (Br. 62.) They submit to the Court "that a decision which bases a finding of unjust discrimination on distance, as a sole controlling factor, is arbitrary." (Br. 63.) But the preceding chapter of their brief points to underlying findings "that circumstances and conditions affecting state and interstate transportation are substantially similar," and that "there is no transportation reason" for a basis of state rates different than found reasonable interstate. (Br. 58 to 59.) The chapter under consideration concedes in substance that the report as a whole purports to make a distinction between single lines and joint lines. (Br. 62.) Must all this be repeated and in some way detailed in the ultimate finding and order of the Commission? If it were attempted, it would make for uncertainty rather than certainty. The soundness of, and necessity for, this Court's holding in *American Express Co.* v. *Caldwell*, 244 U. S. 617, that an order of the Commission should be construed together with its report, has been borne out in the Commission's every day work of constructing its reports and orders, and it would seem that such course could work no inequity as between the State and the carriers, or between shippers, state or interstate.

Moreover, appellants' argument to show that the Commission's findings should give recognition to transportation conditions other than distance ap-

pears to support the distinction made by the Commission between single and joint-line hauls. Yet the main difference[25] between the administrative judgment of the Georgia Commission and that of the Federal Commission is that no such distinction should be made, and the substance of appellants' position in this case is that there is no warrant for charging shippers, who are substantially the same distance from market as other shippers, somewhat higher rates because they happen to be located on joint lines. It is apparent that the federal commission has done just what appellants say it should do, namely, give consideration to operating and transportation conditions other than distance. In its judgment, on this low-grade traffic, the transportation service is substantially greater where the shipper has to employ two or more carriers in joint hauls than where he is able to reach his market by a single-line haul; and it gave effect to that judgment by prescribing somewhat higher rates for joint-line service.

It is obvious that where transportation conditions are the same, a shipper substantially more distant from market than a competitor must expect to pay a higher rate. Conversely, assuming that the distances involved are the same but transportation conditions substantially different, equally the

[25] This should be qualified by again calling attention to the fact that in seven of the gradations up to 200 miles the Georgia scale is lower than the Commission's. In 10 gradations it is the same.

shipper so situated as to require the additional service, must expect to pay a higher charge.

4. Appellants attack on the order, based on the assertion that it covers many state rates where the carriers do not participate in a corresponding interstate haul, is unsound in law and based on an assumed premise contrary to the general showing of record

Appellants contend that a carrier can not in law be found guilty of unjust discrimination unless it participates in the traffic both from the preferred point and from the prejudiced point, and assert that in countless instances the Georgia rates affected by the Commission's order "are over a railroad which does not maintain or participate in a corresponding interstate haul."

No instances are cited to bear out the assertion of facts. It must be kept in mind that the defendant carriers are all carriers engaged in interstate transportation; that the commodities involved constitute a large proportion of the carriers traffic in southern territory; that it was shown to move longer distances in that territory than in other territories; and that the Georgia Commission itself admitted that its own investigation had shown keen competition between the producers of all the materials at the principal markets both inter and intrastate. Furthermore, it is not clear just what is meant by appellants statement that there are countless instances where the railroads do not maintain or participate in a corresponding interstate haul. Road building may be undertaken at any time and

at any place. Do appellants mean that for a particular construction all hauls of a carrier were intrastate? Do they mean that over a particular period of time their hauls to certain destinations were all intrastate? Such distinctions would seem to be too fine-drawn to be permitted to defeat the plain purpose of the statute.

As stated in *St. Louis S. W. Ry.* v. *United States*, 245 U. S. 136, localities require protection against combinations of connecting carriers as well as against individual carriers. In *United States* v. *Illinois Central R. Co.*, 263 U. S. 515, equalized rates on lumber were maintained from a large blanket territory except that a somewhat higher rate was charged the Swift Lumber Company located in the same general territory, but on the Fernwood & Gulf Railroad, an independent connection of the Illinois Central. Upon complaint the Commission found that the Swift Lumber Company was subjected to undue prejudice, and it ordered the carriers to remove the prejudice by establishing and maintaining rates, on the one hand, no lower from the blanket territory than those contemporaneously maintained by them from points on the Fernwood & Gulf and, on the other hand, by rates no higher from points on the Fernwood & Gulf than those contemporaneously maintained by them from said blanket territory. The Fernwood & Gulf had a joint rate with the Illinois Central from points on its line, but it will be seen that, although it was found guilty of discrimina-

tion and ordered to establish rates no higher than those contemporaneously maintained from the preferred points, it did not participate in the traffic from the preferred points nor maintain or participate in any rate from the preferred point. Similarly, in *Wyoming Railroad* v. *United States*, 263 U. S. 515, 527, the Wyoming Railroad which was held guilty of discrimination against points on its line and ordered with the other carriers to remove same by charging no higher rates than those contemporaneously maintained from the preferred point, did not participate in the traffic from the preferred point nor maintain nor participate in the rates from the preferred point. It should be noted, too, that the Wyoming Railroad's participation in rates from the prejudiced points was only by way of its local rate in combination with rates of the Burlington.

It should be further kept in mind that in a section 13 (4) case such as this, where the interstate Commission has adjudicated the reasonable level of interstate rates and the carriers are petitioning for relief from lower rates imposed by state authority, the real source of responsibility for the preference and discrimination is not in any carrier or carriers but in the state. The preference and prejudice flows from a common source, namely, the state; yet the state controls only one branch of the fork of discrimination—the preferential state rates.

III. THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE COMMISSION'S ORDER "AS ONE NEEDED TO AVOID AN UNDUE BURDEN ON THE REVENUES OF THE CARRIERS

As pointed out above, an order of the Commission for removal of unjust discrimination caused by state rates may rest either upon the ground of undue prejudice against interstate shippers, or upon the ground of unjust discrimination against interstate commerce as a whole, that is, on the ground of disparity in intrastate rates which casts a burden on other commerce in maintaining the revenues of interstate carriers. *Wisconsin R. R. Comm. v. C. B. & Q. R. R.*, 257 U. S. 563, 586.

In this connection it should not be lost sight of that the first hearings and report of the Commission have a considerable bearing on this feature of the case. The tonnage figures and testimony there given showed the great and growing importance of this traffic to the carriers, due to the highway building programs of the states and other construction under way generally in the South. (R. 18, 28.) The keen competitive situation for the business was there shown and the fact that it had resulted in a distorted rate structure, the bulk of the traffic being handled by the carriers on so-called depressed rates. (R. 21, 28, 40.) The purpose of the wide general revision of rates there made by the Interstate Commission was to put an end to this chaotic condition. As said in its report:

> While we shall not prescribe minimum rates, we shall prescribe a scale which takes

> fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result, ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic. (R. 109.)

The carriers, shippers, and other parties, generally speaking, were in hearty accord with the objective of the Commission. As aforesaid, the rates were subsequently voluntarily extended by the carriers interstate throughout most of southern territory and were widely adopted intrastate. (R. 91, 628.)

Following the different basis prescribed by the Georgia Commission, rates were established intrastate thereunder effective May 1, 1928. At the subsequent hearings further tonnage figures were introduced by trunk-line carriers, and, for a four-month period subsequent to May 1, 1928, figures illustrative of the burden imposed by the Georgia rates on revenues of carriers operating in Georgia. (R. 100 to 102.)

It was shown that the interstate basis, if applied to 2,342 carloads of this traffic which originated in Georgia on the Southern during said four-months' period, would have produced $12,000 more revenue than was produced by the Georgia rates.

(R. 667, 668.) This is equivalent to $36,000 computed on an annual basis. During the same period the entire Southern Railway System originated and delivered 12,817 shipments and participated in the joint movement of 14,977 shipments. During the four-month period 50,687 tons of the commodities originated at producing points in Georgia on the Seaboard Air Line and moved to destinations in Georgia. Charges were collected based on the Georgia scale. Such charges were $7,307 less than they would have been if established on the interstate basis, or about $22,000 computed on an annual basis. General tonnage figures were also introduced by the Seaboard showing, among other things, that during 1927 it had handled 5,213,183 tons of the materials which was equivalent to 25.5 per cent of its total tonnage. (R. 675.) The Seaboard also introduced estimates (based, however, on actual tonnage) showing that for a six-months' period ended June 30, 1928, the interstate basis would have produced approximately $8,000 more revenue than the Georgia rates on intrastate traffic moving from one point, namely, Highway Spur. (R. 677, 678.)

During the year 1927 the Georgia Railroad, Western Railway of Alabama, and the Atlanta & West Point handled 507,753 tons, 714,148 tons, and 397,380 tons of these commodities, which constituted 17.03, 29.99, and 20.78 per cent of the total tonnage handled by each, respectively.

For the Georgia Railroad it was shown that during the four-month period ended August 31, 1928, 100,515 tons of the traffic originated on its line in Georgia and moved to points in Georgia. The charges collected were shown to be $9,148 less than would have accrued on the interstate basis. This is equivalent to about $27,500 on an annual basis. (R. 101, 683, 684.)

The above illustrative mathematical data on traffic originated by important Georgia lines in and of itself shows substantial disparity. If extended to all intrastate traffic in which they participate and which is moved by other Georgia lines, the disparities shown would be correspondingly greater.

The Atlantic Coast Line did not introduce figures of this latter nature. "It is an important delivering but not an originating line in Georgia." (R. 627, 628.) However, its witness called attention to tonnage figures given at the first hearings (R. 625), and then said:

> I find that for the first eight months of 1928 the Coast Line handled 2,572,417 tons of these commodities, which represents 18.6 per cent of the total tonnage. During the same period of 1927 the Coast Line handled 3,517,513 tons, representing 22.7 per cent of the total tonnage handled. (R. 626.)

The difference in tonnage seems significant in connection with testimony of shippers above referred to that the 1928 Georgia rates had closed or

curtailed that market to interstate shipments. The 1928 figure, moreover, would include only four months after the new Georgia rates had been established. The Commission itself refers to the reverse situation—that is, of curtailed interstate movement from Georgia—and says:

> Testimony of various Georgia producers shows that prior to the going into effect of the prescribed interstate basis of rates these Georgia producers shipped extensively into Alabama, but that they are now marketing nearly all of their products within Georgia. This indicates that the differences between the interstate and Georgia intrastate rates have brought about a diversion of much of this traffic from interstate to intrastate channels. (R. 104–105.)

The diversion of the traffic to intrastate channels would mean, of course, that it would move under the lower state rates.

There was even testimony of certain Georgia shippers indicating that a reversion to the old conditions within Georgia was resulting, namely, of competitive rates depressed below the Georgia scale itself. (R. 104, 105.)

1. The Commission's finding on the revenue burden feature

Although lack of substantial evidence was urged before the Lower Court, there was no attack there made against the adequacy of the Commission's finding on the revenue burden feature, unless cer-

tain general allegations in the bill be regarded as such. (R. 1 to 11.) In this court appellant Georgia Commission asserts that the finding does not constitute compliance with the decision in *Florida v. U. S.*, 282 U. S. 194.

The Commission's ultimate finding on the revenue burden feature is in this case, just as in the *Florida case*, to the effect that intrastate rates result "in unjust discrimination against interstate commerce." This finding, however, when taken together with other statements and the context of the two reports, takes on an entirely different character than that which it has in the *Florida case*. The decision in the *Florida case* reads, at page 194:

> * * * There is a concluding clause that the intrastate rates result "in unjust discrimination against interstate commerce." This general statement in the language of the statute, neither standing alone nor taken in its context, could be regarded as sufficient to support a state-wide order from a standpoint of income, in the absence of supporting findings of fact as to the revenue from the traffic in question.

Furthermore, it will have been seen that, in the instant case, the revenue burden feature is only in part the same type as was involved in the *Florida case*, for an outstanding purpose of the Commission was to terminate rate war conditions, whereunder the bulk of the traffic, interstate as well as State, had been moving under depressed rates. Not

only was there the situation of Georgia rates lower than interstate rates, demonstrating a revenue burden which higher rates would relieve if shipments were not substantially curtailed, but, over and above that, there was the fact that the substantially lower state basis and uncontrolled competitive conditions would, and was, tending toward still lower Georgia rates, threatening the whole rate structure which, by the Commission's orders and the cooperation of other States and the carriers had become established over a wide territory.

The Florida decision had pointed to the fact that the Commission had established its basis of interstate rates in northern Florida only, whereas here the Commission has prescribed its interstate basis of rates throughout Georgia and a wide adjacent territory. This latter, taken together with its frequent admonitions, that since the maximum prescribed was low any departures therefrom would tend to break down the general rate structure and inevitably be burdensome to other commerce, must be regarded as markedly distinguishing the case from the Commission's report in the *Florida case*. Another distinguishing feature is the testimony by log producers in the *Florida case*, referred to by the court, to the effect "that any material increase in the Florida intrastate rates would either cause them to move their plants to the timber or abandon operations, and that in either event the carrier would lose considerable traffic."

There is nothing of this nature of record in the instant case. The only curtailment of intrastate commerce that was indicated was into the channels of interstate commerce, where, of course, it would yield revenue on the interstate basis. (R. 101, 102.)

The Commission stated what was shown in respect of revenue burden by the carriers' figures. The other evidence going to the context, that is, the evidence categorically mentioned by the Commission to support its revenue burden finding, has just above been set forth and need not be repeated. It should, however, be again emphasized that the interstate basis of rates had been prescribed for the purpose and with the hope of terminating the theretofore wasteful competitive conditions and of conserving the carriers' revenues. In this particular, as heretofore said, the revenue-burden feature of this case is in part of a type different from that to which the Florida decision is directed.

The Commission had stated in its first report:

> While we shall not prescribe minimum rates, we shall prescribe a scale which takes fully into consideration the very low values **of these commodities and all characteristics,** transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result, ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic.

This was again repeated in its second report. (R. 109.) Also the Commission, after reviewing evidence of Georgia shippers that certain state rates were being depressed even below the Georgia scale, referred specifically to their contentions that if the low Georgia rates should be permitted to continue the result would be to disrupt the entire rate situation in other southern states. (R. 105.)

IV. THE ORDERS ATTACKED NEITHER OPERATE BEYOND THE AUTHORITY OF THE COMMISSION, NOR ARE THEY UNCERTAIN

The remaining contentions in appellants' brief appear to be relied upon to show that the Commission orders are invalid, both for uncertainty and because beyond its authority. They appear under several headings of the brief, but we believe that a simple discussion of the Commission's findings and orders and their purport will answer the contentions from every standpoint. The ultimate findings read:

> We further find that respondents' rates applicable to the intrastate transportation of sand, gravel * * * in carloads, between points in Georgia, *to the extent that they are lower,* distance considered, than the interstate rates contemporaneously applicable to the transportation of the same commodities between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in the State of Georgia, *not exceeding* the rates set forth in the appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation

of said commodities, in straight or mixed carloads, according as said respondents participate in said intrastate and said interstate transportation, result and will result in undue preference and advantage of shippers and receivers of freight in intrastate commerce within the said State of Georgia and in undue prejudice to shippers and receivers of freight in interstate commerce between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in Georgia, and in unjust discrimination against interstate commerce.

We further find that said undue preference and undue prejudice and unjust discrimination can and should be removed by the establishment, maintenance, and application to intrastate traffic between points in the State of Georgia of rates which shall not be lower, distance considered, than those contemporaneously applicable to the transportation of interstate traffic between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in Georgia, *not exceeding* the rates set forth in the appendix to this report and heretofore found reasonable in these proceedings for said interstate transportation. (R. 110, 111.) (Italics ours.)

Carrying out the latter finding the Commission's order reads:

It is further ordered; That said respondents, according as they participate in the transportation as aforesaid, be, and they are

> hereby, notified and required to establish, on or before March 3, 1930, and thereafter to maintain and apply to the intrastate transportation of sand, gravel * * * in carloads, between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, in straight or mixed carloads, between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in the State of Georgia, *not exceeding* the rates set forth in the appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities in straight or mixed carloads. (R. 115.) (Italics ours.)

The findings and order in the complaint case (No. 17763) are the same in the particulars involved in this discussion. (R. 111, 112, 115.)

1. The findings and orders operate only on State rates to the extent that they were lower than interstate rates

Appellants assert that the "Commission's order definitely and intentionally requires reductions in numerous state rates in Georgia." (Br. 26.) They speak of this frequently and also assume that the order purports to operate upon rates which were on the same basis as interstate rates.

But it will have been seen that the Commission's finding was that the intrastate rates *to the extent*

that they are lower, distance considered, than the interstate rates result in undue prejudice and unjust discrimination. And its further finding was that *said* undue prejudice and unjust discrimination should be removed by the establishment of rates which shall not be lower than the contemporaneously applicable interstate rates, that is, by the establishment of rates which it was to prescribe in its order. Naturally its order is to be read in conformity with the last-mentioned finding, that is, as being directed only against said lower state rates, which caused *said* undue prejudice and unjust discrimination.

As further disputing appellants' contention that the Commission's order intentionally requires reductions in State rates, it should be pointed out that only minimum rates are prescribed. What the carriers are required to establish intrastate are rates "which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, in straight or mixed carloads, between points in the State of Georgia, and from points in other states in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities in straight or mixed carloads."

Rates "which shall not be lower" than the contemporaneously applicable interstate rates alone

are prescribed. All words that follow are merely descriptive of the contemporaneously applicable interstate rates. The language is not as appellants describe it (Br. 12), that the railroads are to establish rates not lower than those contemporaneously applicable on interstate traffic, *and* not exceeding the scales of rates set forth in the appendix. The "and" is absent. It will be noted that, in the first finding (above quoted), to the effect that state rates result and will result in undue preference and unjust discrimination to the extent that they are lower than the contemporaneous interstate rates, the same language is used in describing the interstate rates. The Commission was there neither finding the state rates that should be established nor prescribing establishment of the rates. All that it was doing was to find that the state rates to the extent that they are lower than the interstate rates contemporaneously applicable, *not exceeding* the scales of rates in the appendix, result and will result in undue preference and prejudice and unjust discrimination.

The Commission's orders should, of course, be read together with its report (*American Express Co.* v. *Caldwell*, 244 U. S. 617, 626), and particularly together with the findings in the report.

The Commission's orders, then, operate only on the Georgia rates to the extent that they are lower than the interstate rates; and, even as to said rates, it prescribes only the minimum level, leaving the maximum level to the Georgia Commission. This

leaves certain Georgia rates on a higher basis than other Georgia rates, and than the interstate rates. To the extent that these higher state rates result in prejudice to certain state shippers as compared with other state shippers or interstate shippers, the Georgia Commission is the body to correct the situation and the Interstate Commission so recognized.

2. The words "contemporaneously applicable" in the order have been similarly used in other orders which have been before this court, and their meaning is that given them by the lower court

The meaning of the term "contemporaneously applicable" as appearing in the orders is, despite appellants' contentions to the contrary, that given to it by the lower court, namely, that the contemporaneously applicable interstate rates which are made the basis for state rates are "the rates now applicable and now maintained by the railroads."

As bearing this out reference is again made to the first finding of the Commission, above quoted. There the finding was that state rates to the extent that they are lower than the contemporaneously applicable interstate rates result and will result in unjust discrimination against interstate shippers and commerce. A finding of resulting unjust discrimination is, of course, a prerequisite to an order, and the Commission found that the state rates only to the extent that they are (now) lower than the contemporaneously applicable interstate rates result and will result in such unjust discrimination;

it made no finding that state rates to the extent that they may in future be lower than the contemporaneously applicable interstate rates results and will result in unjust discrimination. The sense in which the term "contemporaneously applicable" is manifestly used in this first finding of the Commission must, it would seem, be attributed to it throughout.

In any event orders of the Commission similarly phrased have been upheld by this Court, without exception being taken by the parties or the Court to the phraseology (*United States* v. *Illinois Central,* 263 U. S. 515, 518);[27] and, too, where state rates were involved. *Shreveport Case,* 234 U. S. 342, 346–347. In *State of Alabama* v. *United States,* 279 U. S. 229, the Commission's order involved was similarly phrased. In there holding that the lower court had not abused its discretion in denying an interlocutory injunction, the Court said at page 230 that "the order of the Commission is within its general powers."

3. The 4th Section relief granted by the Commission did not render its orders uncertain in meaning

As above shown, the Commission's orders prescribed state rates "which shall not be lower, distance considered, than those contemporaneously applicable" on interstate traffic. Speaking of the similar wording in the findings, appellants con-

[27] Such orders involving purely interstate commerce have been involved in numerous other decisions.

cede that although they do not specifically refer to joint-line and single-line hauls "other portions of the report and particularly the scales set forth in the Appendix" purport to make a distinction and rate difference between such hauls. (Br. 62.) A like reading of the order, together with the report, will be found to clear up each alleged uncertainty mentioned by appellants.

Appellants repeatedly cite instances where they assert that the rates contemporaneously applied interstate depart from the prescribed interstate basis, thereby, so they assert, making uncertain the interstate rates as a standard for state rates. But all are accounted for by the instructions for computing distances contained in the report and by the order granting relief from the 4th section of the Act, which will be hereinafter described. In prescribing its scales of rates for interstate application the Commission laid down the following rule for computing distances thereunder:

> In computing distances for the application of the foregoing rates, we find that the shortest routes shall be used over which carload traffic can be moved without transfer of lading. (R. 55.)

This means of course that, where there are several routes between origin and destination, the short distance route is the rate-making route. The varying distances over the other routes are plainly to be disregarded in computing their rates, that

is, their rates from such origin so served by competitive routes.

Referring to the above rule, the Commission said in its final report:

> We meant by that provision, and the respondents so construed it, that the shortest single-line route over which carload traffic could be moved without transfer of lading should be used in connection with the single-line scale, and the shortest joint route over which carload traffic could be moved without transfer of lading should be used in connection with the joint-line scale.
>
> In checking in rates under this formula the respondents found, of course, that the lowest rate between two points made in some instances over single-line routes while in other instances the lowest rate made over joint-line routes. (R. 107.)

The Commission then referred to its order granting 4th section relief and stated in substance that that was intended, not only to permit circuitous lines to meet the rates of the direct routes, but also to permit joint-line carriers to meet the rates of single-line carriers between the same origin and destination and still apply the joint-line scale from intermediate points. (R. 108.) In order to permit circuitous or joint-haul routes to meet the rates of the direct and lowest rated route and at the same time to maintain the scale rate, single-line or joint-line as the case might be, from intermediate points, relief had had to be granted from the clause of sec-

tion 4 of the Act, which forbids carriers, unless authority is first obtained from the Commission, to charge more for a shorter than a longer haul over the same route and in the same direction, that is, to charge more from an intermediate point on a line than from a more distant point to the same destination. Such relief was granted by a general order, which authorized the carriers in any routes (not circuitous beyond a named per cent) between any origin and destination to maintain the lowest rate applicable over any route between the same points, and to maintain higher rates, not exceeding the scale basis from, to, and between intermediate points. (R. 108.) The granting of 4th section relief in such cases is universal and obviously necessary unless the direct route is to secure all of the traffic.

So that it will be seen that at the time of the Commission's final order the situation was that, where there was carrier competition from an interstate origin to a Georgia destination, the lowest-rated route was sometimes a single-line haul and sometimes a joint-line haul, depending upon whether the lowest rate made over the one or the other. Under the scale rule, above quoted, the circuitous single-line route could meet the rate of the shortest single-line route between two points and the circuitous joint-line route could meet the rate of the shortest joint-line route between two points. Under the 4th section relief they could meet the

lowest rate between the two points whether made over a single-line or a joint-line route. For example, assume that a single-line carrier is itself the shortest single route between two points and yet a joint-line route is not only shorter but also rates made over it on the joint-line scale are the lowest, the 4th section orders permits the single line to meet the rate and share in the business and still maintain its scale rates from intermediate points. Conversely, the same is true in respect of a joint-line route which is itself the shortest joint-line route between two points.[1]

Naturally the direct-route rate as applied to the varying distances of all these competitive routes would produce countless distance bases of rates, and just as naturally it is apparent that such were not the "contemporaneously applicable" interstate rates which were made the bases for state rates. As to this very matter the Commission said:

> Much testimony and data were submitted on behalf of the Georgia commission and certain Georgia interests setting forth interstate rates applicable on this traffic over various routes between many points in this territory. This evidence is submitted to support the contention here made that carriers are maintaining numerous interstate rates on this traffic which are below

[1] The Commission's report makes altogether clear that the same freedom within Georgia is left with the carriers and Georgia Commission. (R. 108, 109.) And the lower court so held. (R. 170.)

> the level of the 17517 scales. An examination of this data discloses that with few exceptions the instances given are simply where different routes are, under the authorized fourth-section relief above referred to, meeting at competitive points the rates set by the rate-making route and applying at intermediate points the authorized scale basis. * * *
>
> The evidence in this case shows that with comparatively few exceptions, considering the extent of the territory covered, the carriers have checked in over the rate-making routes throughout the territory considered in the original proceedings interstate rates which are on the basis of the [fol. 123] 17517 standard-line scales. Carriers explain that the instances where such rates are off the approved basis are the result of errors which will be corrected.

Following this the Commission mentioned that there was evidence that certain of the weak short lines named in its first report were not assessing the 25 cents arbitrary which they had been authorized to charge in addition to the standard-line rates; and it then said that "summing up the situation, the evidence shows on the whole" that the carriers, in publishing the interstate rates, had conformed to the thought expressed in its first report to the effect that, while they were not prescribed as minima, yet since the nature of the traffic and other consideration had necessitated the prescribing of low maxima, such ought to be adhered to, for the establishing

of lower rates would inevitably force an unwarranted reduction in the general rate level on the traffic, which would be burdensome to other commerce. (R. 109.)

The exceptions from adherence to such maxima were, as above shown, inadvertent errors and the failure of certain weak short lines to assess the arbitrary which they had been authorized to charge in addition to the standard-line scales. The inadvertent errors were to be corrected. As to the failure of certain weak short lines to take their arbitrary the Commission said:

> Our findings and order herein, however, will automatically adjust themselves to situations where a short or weak line does or does not assess the arbitrary. (R. 109.)

Appellants' brief (Appendix II, XII) mentions two such weak lines in Georgia which are not charging any arbitrary interstate over the standard-line basis and ask what basis of rates shall be charged intrastate in Georgia to and from points on these and other so-called relief lines. The simple answer would appear to be that the order contemplates that where the arbitrary is not charged interstate so likewise it should not be charged intrastate.

The above excerpts from the report show, therefore, that while the interstate scales were prescribed only as maxima the Commission, before ordering that state rates be established not lower, distance considered, than the contemporaneously applicable interstate rates, had ascertained and

stated in its report that (with the exceptions above accounted for) interstate rates had been established at the maxima. Over the rate-making routes, whether single-line or joint-line, the full scale rates had been established. Although said rates, as applied to the competitive routes between the same points produced varying distance rates, the Commission's report could hardly make plainer than it does that such were not the contemporaneously applicable interstate rates referred to in its order. And from intermediate points on all such competitive routes the authorized scale rates had been established, whether single-line or joint-line as the case might be.

The necessity for territorial, rather than piecemeal adjustment of rates on particular commodities, has been heretofore explained. Considering the scope of the adjustment made in this proceeding, the orders are in fact peculiarly definite and certain. If appellants consider that particular situations require clarification, they can apply to the Commission, as suggested by the lower court. *Wisconsin R. R. Comm.* v. *C. B. & Q. R. R.*, 257 U. S. 570. (R. 167.)

Appellants complain of the distinction which, while permitting circuitous competitive routes to meet the rate of the direct route, yet prohibits a carrier operating from a different origin to lower its rates for competitive purposes. (Br. 113.) The distinction between competitive routes from the same origin to the same destination and competi-

tive routes from different origins is readily obvious. Rates made the same over routes of widely varying distances between the same origin and destination are universal. Familiar examples are the equalized fares over routes of varying distances between New York and Chicago and between Washington and Chicago. The principles permitting thereof are known to the court and sufficiently explained in the Commission's report.

CONCLUSION

The decree of the court below dismissing the bill should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930—No. 555

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL,
Appellants

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, ET AL,
Appellees

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

BRIEF ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ATLANTA & WEST POINT RAILROAD COMPANY, SEABOARD AIRLINE RAILWAY COMPANY, THE LESSEES OF THE GEORGIA RAILROAD, THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, CENTRAL OF GEORGIA RAILWAY COMPANY, ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, SOUTHERN RAILWAY COMPANY

FRANK W. GWATHMEY,
W. N. McGEHEE,
ROBERT C. ALSTON,
Attorneys for the Carriers Mentioned

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PART ONE

JURISDICTION

The Court has found probable jurisdiction of this case.*

U. S. Sup. Ct. Repts., 75 L. Ed. 261.

STATEMENT OF THE CASE

THE MATTER INVOLVED

The Commission aptly states the question as follows (R. 107):

> "The real question here is whether the order of the Georgia Commission here considered has brought about an intrastate rate structure on this traffic within Georgia which, in its relationship to the approved Interstate rate structure has resulted and results in an unlawful situation which should be removed."

The Georgia Commission's order referred to is that of March 13, 1928 (R. 220).

The order of the Interstate Commerce Commission involved is dated December 9, 1929 (R. 113, Report begins R. 88),

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*The Interstate Commerce Commission's first report, dated Jan. 21, 1927, is found in 122 I.C.C. 133 (R. 12). Its order reopening the report and orders in the first report, dated June 4, 1928, is reported in 140 I.C.C. 85 (R. 86). The Commission's second report and order, dated Dec. 9, 1929, is in 160 I.C.C. 309 (R. 88). The first opinion of the United States District Court for the Northern District of Georgia, filed March 3, 1930, on interlocutory hearing (R. 163), is in 39 Fed. (2d) 169. The opinion of the same court on final hearing, filed July 5, 1930, (R. 168), is in 42 Fed. (2d) 467.

known as Docket No. 17517, embracing Docket No. 17763, in which the Interstate Commerce Commission fixed rates for intrastate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone and slag, in carloads, between points in the State of Georgia, which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, in straight or mixed carloads, between points in the State of Georgia, and from points in other states in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the Appendix to the report and theretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities in straight or mixed carloads.

The same kind of order (included with the foregoing order) was issued to the defendants in No. 17763 (carriers by rail including those for whom this brief is filed) as to the same commodities, requiring that they maintain in the intrastate transportation of said commodities in Georgia rates which shall not be lower, distance considered, than the interstate rates contemporaneously maintained by said defendants on said commodities from Montgomery, Alabama, to the same destinations in Georgia, not exceeding the rates set forth in the Appendix to the report and theretofore found and prescribed as reasonable in No. 17763 for the interstate transportation by said defendants of the said commodities from Montgomery, Alabama, in straight or mixed carloads (R. 113). The Commission had previously in these proceedings, on January 21, 1927, fixed *interstate* rates in this territory on these commodities (R. 68). Those rates thus fixed were then in effect. The Commission had, as will be herein shown, left the Georgia rates to be adjusted by that Commission as a matter of comity, expressing the belief that the Georgia Commission would adjust its rates to conform to those fixed by the Interstate Commission (R. 59). The

Georgia Commission failed to make that adjustment. On the other hand, its order of March 13, 1928, accentuated the discrimination already existing.

THE DECREE APPEALED FROM

The decree appealed from was rendered on final hearing by the United States District Court for the Northern District of Georgia, organized as required by statute, dated June 24, 1930 (R. 172)—opinion dated July 5, 1930 (R. 168)—(42 Fed. (2d) 467). The two bills in this court had been consolidated (R. 159). The consolidated bill was dismissed. The decree on interlocutory hearing had denied an injunction March 3, 1930 (R. 168), (39 Fed. (2d) 169). The Court refused to restrain the Interstate Commission's order, either temporarily or permanently.

THE POINTS MADE BEFORE THE INTERSTATE COMMISSION IN DEFENSE OF THE GEORGIA PUBLIC SERVICE COMMISSION'S ACTION

The Interstate Commission found (R. 105-6) that the chief defenses offered for the action of the Georgia Commission in failing to authorize the application of the scales of rates prescribed by the Interstate Commission in Docket 17517 were:

> "(1) That there are various producing plants in Georgia that are so located that many destinations to which they ship or hope to ship are only reached by joint-line routes and it is desirable that such producing points should pay rates to such territory no higher than would Georgia plants having single-line hauls of approximately the same length to the same destinations in order to prevent discrimination between Georgia plants.
>
> "(2) That certain interstate shipping points would be able to reach various destinations in Georgia over single-

line routes and at lower rates than could certain competing Georgia plants. * * *

"(3) That it is not *now* the policy of the Georgia Commission to authorize joint-line differentials. (Italics added.)

"(4) That the scale prescribed by the Georgia Commission is reasonable and is better gradated than are the 17517 scales."

POINTS MADE BEFORE THE DISTRICT COURT IN DEFENSE OF THE GEORGIA PUBLIC SERVICE COMMISSION'S ACTION

The court below found that (R. 163-4):

"The only contentions of complaint [complainants] arising upon the face of this record which seem to us to be debatable are:

"1. That a full hearing was denied. * * *

"2. That the order did not stop with prescribing a maximum for interstate rates, but took over from State authority the general function of intrastate rate making on these commodities for the future.

"3. That the minimum sought to be prescribed is indefinite and uncertain.

"4. That as to rates above 200 miles the interstate rates are arbitrary and unreasonable, and themselves discriminate against the shorter hauls and other commerce."

On second hearing the court found that the fourth point was abandoned (R. 169).

CONTENTIONS OF THE CARRIERS

The rail carriers on behalf of whom this brief is filed contend that the case was submitted to the Commission on agreement

that operating and other transportation conditions on standard lines throughout the territory involved are sufficiently similar to warrant a uniform rate level upon the commodities mentioned (R. 51) and that the Commission first fixed interstate rates reasonable for the entire territory, contemplating that they would be uniformly adopted, and refrained from making intrastate rates in Georgia on the theory that the Georgia Commission would cooperate and adopt the same scale. The Georgia Commission by its order of March 13, 1928 (R. 79, 220), prescribed rates which did not conform to the Interstate Commission's rates, but increased the discrimination.

Thereupon, after proper notice and hearing, the Commission prescribed for Georgia intrastate transportation the same rates, or rates on the same bases, distance considered, which it had previously prescribed for interstate shipments.

The carriers also contend that neither one of the points mentioned by the Interstate Commission as having been made by the Georgia Commission, above set out, offers any reason why the Interstate Commission should not have prescribed intrastate rates in Georgia for the transportation of these commodities.

Each point made by the State Commission is consistent with the proposition that there should be uniform rate structures for the commodities involved, interstate and intrastate, in Georgia and surrounding territory. The points made by the Georgia Commission are to the effect that the scale proposed by them for this uniformity is better than that prescribed by the Interstate Commission.

The carriers also contend that the points made by the Georgia Commission before the District Court are likewise entirely consistent with the position that there should be a uniform rate level in the southern territory, including Georgia, on the commodities mentioned, but that the Georgia Commission prefers its method

of making this uniformity and insists upon its system as against the system prescribed by the Interstate Commerce Commission; that is, the Georgia Commission has proposed one level of rates to remove the discrimination produced by the relation of the inter and intrastate rate, and the Interstate Commission has ordered another. The direction of the Interstate Commission in such circumstances is supreme.

The carriers further contend that, independently of the method of submission of the case, the findings of the Commission of unjust discrimination against persons and places and traffic and against interstate commerce, worked by the intrastate rates of the Georgia Commission for the carriage of the commodities involved by its order of March 13, 1928, are supported by adequate evidence and that the said findings and evidence sustain and require the orders entered by the Commission, and that the decree of the lower court was and is correct and should be affirmed.

THERE WERE TWO BILLS IN EQUITY

There were two bills filed in this proceeding—one by Georgia Public Service Commission and its members against the United States and the Interstate Commerce Commission, known as No. 563 (R. 1); and the other by the State Highway Board of Georgia, the Commissioners of Roads and Revenues of Fulton County, the City of Atlanta, and certain individuals (R. 148). These two bills are to the same purport and are often in the same language. On March 1, 1930, the latter case was consolidated into the first—No. 563 (R. 159), and the litigation proceeded as one case under the title of case No. 563.

ORIGIN OF THE PROCEEDINGS

The proceedings were instituted by the Commission upon petition of the several railroads operating in the State of Geor-

gia (R. 14, 188). The prayer of their petition was to the effect that the Commission proceed to enter upon an investigation, as provided in paragraph 3 of section 13 of the Interstate Commerce Act, with reference to the rates upon the commodities here involved, and after investigation to enter such order as is provided in paragraph 4 of section 13 of the Interstate Commerce Act as would effect a removal of the undue prejudice then existing. The carriers claimed that the rates prescribed by the Georgia Public Service Commission in its order of February 25, 1925 (R. 200), on the commodities in carloads for intrastate application between points in Georgia and then in effect gave an undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce in Georgia, on the one hand, and persons and localities in interstate commerce, on the other hand, and were unjustly discriminatory against interstate commerce and placed an undue burden on interstate commerce in violation of section 3 and section 13, subdivisions 3 and 4, of the Interstate Commerce Act.

The Interstate Commission, on October 5, 1925, ordered the investigation petitioned for by the carriers (R. 204).

The Commission, after proper notice to the carriers and to the Governor of Georgia and to the Georgia Public Service Commission (R. 14-15), proceeded to make the investigation covering the entire territory defined as southern territory. That term as used in the report includes, roughly, the territory east of the Mississippi River and south of the Ohio River and the line of the Norfolk and Western Railroad from Bristol, Tennessee-Virginia, to Norfolk, Virginia. It does not include the eastern corner of Kentucky served by the Chesapeake & Ohio. It is the territory in which freight rates are generally governed by the Southern classification (R. 16).

The Commission made its report on January 21, 1927 (R. 12), and entered its orders on that date (beginning R. 68). The order fixed rates for *interstate* transportation of sand, gravel (washed or unwashed) and clay gravel in straight or mixed carloads from Montgomery, Alabama, and Chattanooga, Tennessee, respectively, on the carriers' lines in Georgia and Mississippi, and on gravel (washed or unwashed) and clay gravel in straight or mixed carloads from the same points of origin to destinations on the carriers' lines in Georgia and Mississippi, and fixed rates on all of the commodities mentioned in straight or mixed carloads between points in the State of Georgia and between points in the State of Georgia and points in other states in southern territory as hereinabove defined, except Florida. The order did not provide rates for intrastate transportation in Georgia. On the other hand, the Interstate Commission said (R. 59):

> "We have been impressed with what appears to us to have been the broadminded attitude taken by the Georgia Commission when it undertook the revision of these rates, which resulted in its order of February 25, 1925. This order, as we have seen, resulted in raising many depressed intrastate rates applying between important producing and consuming points, and subsequently had the effect of bringing about substantial increases in important depressed interstate rates. Considering the results brought about by this order, it could not be found from this record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce. We are, however, in these proceedings approving a distance scale of rates for application alike to the interstate transportation of all of the commodities here considered. *There is, of course, no transportation reason for the maintenance of a different basis of intrastate rates on these commodities within Georgia than that herein found reasonable for interstate transportation.* However, in view of the attitude taken by the Georgia Commission in the past, which we have above adverted to, we do not now deem it necessary

to make any finding or enter any order in No. 17517 for the future, in so far as unjust discrimination against interstate commerce is there involved, because it is felt that the Georgia Commission will co-operate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved." (Italics added.)

THE PETITION OF CARRIERS TO THE GEORGIA COMMISSION

The carriers operating in Georgia filed their petition with the Georgia Commission requesting that Commission to authorize the establishment of the rates fixed by the Interstate Commission in its No. 17517 for intrastate application in Georgia. Hearings were had on this petition and on March 13, 1928, the Georgia Commission issued its order refusing to authorize the application of these scales within Georgia, but directed the carriers to establish on May 1, 1928, a scale of rates differing from both its own scale fixed in 1925 and from the Interstate scale fixed by the Interstate Commission's said order of January 21, 1927. Those latter rates became effective in Georgia on that date as ordered (R. 92).

Thereupon, the Georgia carriers, under date of April 12, 1928, filed their supplemental petition with the Interstate Commission (R. 211), representing the facts above set out and setting up the Georgia Commission's order of March 13, 1928 (R. 220), and praying that the proceedings be reopened; that further investigation be held by the Interstate Commission with reference particularly to the rates prescribed by the Georgia Public Service Commission in its order dated March 13, 1928; and that such orders as might be necessary or appropriate be entered by the Interstate Commission to remove the discrimination worked thereby (R. 92, 211).

The Interstate Commission reopened No. 17517 (R. 240) for further hearing for the sole purpose of determining whether the rates and minimum weights required by the aforesaid order of the Georgia Commission to be maintained by the respondent rail carriers on intrastate shipments within Georgia of the commodities involved in relation to their interstate rates and minimum weights prescribed by the Interstate Commission in its order of January 21, 1927, cause or will cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable and unjust discrimination as against interstate or foreign commerce (R. 92). Likewise the proceeding in No. 17763 was reopened to the same extent and for the same purposes (R. 242). This involved the rate structure on sand, gravel (washed or unwashed), clay gravel and crushed stone from Montgomery, Alabama, and Chattahooga, Tennessee, to destinations in Georgia.

After a lengthy hearing in which a great deal of evidence was taken, both by way of exhibits and oral testimony, the Commission made its report of December 9, 1929 (R. 88), and its order of the same date (R. 113), fixing a single line scale of rates and a joint line scale of rates. After fixing these rates the order provided (R. 117) that when transportation is in whole or in part over either of the so-called short lines, as set out in Appendix B to the original report (R. 67), the rate set forth in Table A (R. 117) plus an arbitrary of 5 cents per net ton to accrue solely to the short line might be applied.

The Commission in its report rendered on December 9, 1929, found that the rates of the carriers on the commodities mentioned between points in Georgia, in carloads,

> "to the extent that they are lower, distance considered, than the interstate rates contemporanebusly applicable to

the transportation of the same commodities between points in the State of Georgia, and from points in other states in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities, in straight or mixed carloads, according as said respondents participate in said intrastate and said interstate transportation, result and will result in undue preference and advantage of shippers and receivers of freight in intrastate commerce within the said State of Georgia and in undue prejudice to shippers and receivers of freight in interstate commerce between points in the State of Georgia, and from points in other states in southern territory, except Florida, to points in Georgia, and in unjust discrimination against interstate commerce." (R. 110).

The same kind of finding was made in No. 17763 (R. 111).

The following table (R. 94) illustrates the differences between the standard line scale of rates fixed by the Interstate Commission in No. 17517 and which the Interstate Commission prescribed for Georgia, on the one hand, and the rates, single line and joint line, fixed by the Georgia Commission in its order of March 13, 1928 (R. 94).

	SINGLE LINE			JOINT LINE		
Miles	I.C.C. Docket 17517 Cents	Georgia Comm. Order 3-13-28 Cents	Differences Cents	I.C.C. Docket 17517 Cents	Georgia Comm. Order 3-13-28 Cents	Differences Cents
10	50	50	..	65	50	*15
20	55	55	..	70	55	*15
30	60	60	..	75	60	*15
40	70	70	..	85	70	*15
50	80	70	*10	95	70	*25
60	80	80	..	95	80	*15
70	90	80	*10	105	80	*25

80	90	90	..	105	90	*15
90	100	90	*10	115	90	*25
100	100	100	..	115	100	*15
110	110	100	*10	125	100	*25
125	110	110	..	125	110	*15
130	120	110	*10	135	110	*25
150	120	120	..	135	120	*15
160	130	120	*10	140	120	*20
175	130	130	..	140	130	*10
190	135	130	* 5	145	130	*15
200	135	140	‡ 5	145	140	* 5
220	140	140	..	150	140	*10
230	140	150	‡10	150	150	..
250	150	150	..	160	150	*10
260	150	160	‡10	160	160	..
280	160	160	..	170	160	*10
290	160	170	‡10	170	170	..
320	165	170	‡ 5	175	170	* 5
360	175	180	‡ 5	180	180	..
400	185	190	‡ 5	190	190	..
440	195	200	‡ 5	200	200	..
460	205	210	‡ 5	210	210	..

*Georgia Public Service Commission Scale lower than 17517 scale.
‡Georgia Public Service Commission Scale higher than 17517 scale.

DIFFERENCES BETWEEN THE TWO SCALES

Joint Line Differential

The differences between these two scales of rates may be stated as follows:

(a) The Georgia Commission's single line rates and its joint line rates are the same; that is, the Georgia Commission made no joint line rates.

The single line rates of the two Commissions are the same up to 50 miles, when the Georgia Commission's rate becomes 10 cents per ton less than the Interstate Commission's single line

rate. At 70 miles, at 90 miles, at 110 miles, at 130 miles, at 160 miles, the Georgia Commission's rate is ten cents less than the Interstate Commission's single line rate; at 190 miles and at 200 miles, it is 5 cents per ton more than the Interstate rate. These blocks, wherein the Georgia schedule of rates is made lower than the Interstate scale, fit movements from Georgia producing points to Georgia extensive consuming points and thus accentuate the discrimination between the two scales of rates. Then the Georgia rates from 200 miles to 460 miles are either uniform with, or from 5 to 10 cents per ton in excess of, the Interstate rates. In nine instances the Georgia rate is in excess of the Interstate rate over 200 miles. In three instances the rates are equal.

The Georgia scale is almost uniformly less than the Interstate joint line scale. At 230 miles the two scales are the same; they are the same at 290 miles; they are the same at 320 through 460 miles.

The fact that the Georgia Commission's order of March 13, 1928, prescribed one line of rates to be applied, whether one or more than one carrier hauled the freight, whereas the Interstate Commission prescribed a single line scale and also a higher joint line scale, is a very important difference between the two Commissions. The Georgia Commission, in its order of February 25, 1925, which was in effect when the Interstate Commission's order of 1927 was made, fixed single line scales and joint line scales (R. 200-203). In each instance the joint line scale thus fixed by the Georgia Commission was higher than the corresponding single line scale up to 100 miles, and after that the Georgia Commission's rates became in effect one scale.

The Interstate Commission found that (R. 95):

> "The evidence indicates that practically all of the intrastate movements of this traffic within Georgia are less than 200 miles."

The Georgia Commission's order is so framed that it provides lower rates on the hauls used by the Georgia producers and higher rates on those used by the Interstate producers.

In its first report the Commission found (R. 52):

> "In the case of the commodities under consideration, however, there is perhaps more basis for joint line arbitraries than in the case of any other form of traffic. The very low value of these commodities makes the cost of transportation a most vital matter, and it may well be that even the slight increase in rate level over the single line routes, which the elimination of joint line arbitraries would entail, ought to be avoided. Undoubtedly the greater proportion of this traffic moves over such routes. At all events, we have reached the conclusion that in the case of these commodities joint line arbitraries may reasonably be permitted, but should be of lesser amounts and disappear at an earlier stage of the scale than the carriers propose."

It is apparently admitted that joint line carriage is entitled to a higher rate than single line transportation. It is also apparently conceded that in the event one rate is to apply to both joint and single line transportation, it should be higher than for ordinary single line transportation, in order that the carriers may thus have compensation for the extra cost of the joint line transportation (R. 346, 348).

We have just seen that the Georgia Commission recognized the propriety of an increase in joint line traffic up to 100 miles in its order of 1925, and that it departed from that principle in its order of March 13, 1928.

In dealing with this subject the court below in its final opinion (R. 171) said:

> "As we said in Alabama vs. United States, just decided, there are sound reasons for saying that there is extra cost in handling a car over a joint line and this extra cost is

most important to the carriers in this lowest rates. Whether compensation for the extra cost shall be had in a separate joint scale of rates or in a slightly higher average of rates is within the competency of the Commission to decide."

ARBITRARIES TO WEAK LINES.

(b) The second point of difference between the two Commissions is that the Interstate Commission's order allows (but does not require) an arbitrary not in excess of 25 cents per ton of 2000 pounds for certain roads which are named in the orders or which are set out in Appendix B to the first order (note pages 72, 74, 84 of the record).

The Georgia Commission's order of March 13, 1928, allows (but does not require) an arbitrary for Class B roads of ten (10) cents per ton (R. 82 and 83, columns 4 and 5).

The Interstate Commission's power, of course, extended to this question of arbitraries to the weak lines.

MILEAGE

(c) The third departure of the two Commissions is in the method of ascertaining mileage. The Interstate Commission's report provided as follows (R. 107):

"The original report in these proceedings provided that in computing distances for the application of the 17517 scales the shortest routes shall be used over which carload traffic can be moved without transfer of lading. We meant by that provision, and the respondents so construed it, that the shortest single line route over which carload traffic could be moved without transfer of lading should be used in connection with the single line scale, and the shortest joint line route over which carload traffic could be moved without transfer of lading should be used in connection with joint line scale."

The Commission by a Fourth Section Order provided for transportation where there are several routes not circuitous beyond a fixed per cent., so that each route might have the same rate as the lowest over any route, joint or single, by which carload freight might move without transfer of lading. The Commission also provided for the maintenance of the scale of rates to intermediate points on indirect routes. The Fourth Section Order issued by the Commission is set out in Appendix No. 1 hereto.

Under the broad power contained in Section 13, subsections 3 and 4 of the Act, all of the orders herein made were within the power and jurisdiction of the Commission upon a proper case for the removal of discrimination under Sections 3 and 13 of the Act.

COMPETITION

One of the controlling matters in determining whether this low grade traffic should have a joint line and single line rates is competition. The Commission found that:

> "The record as made shows the existence of a keen competitive situation in the production and sale of these commodities and calls for a consideration of the rates on them throughout a substantial part of southern territory" (R. 16).

It also found:

> "The record leaves no doubt of actual and active competition between all of these commodities, except possibly sand" (R. 17).

The Commission again refers to the competitive situation at page 20. Again at page 31 it refers to competition in sand and gravel.

The Commission finds, at pages 52 and 53, that the commodities, as we have said, are of unusually low value.

At page 95 of the record, the Commission in its second report held:

> "That there is keen competition between the respective producers and that interstate and intrastate shippers are in direct competition with each other is admitted by all. The producers in Alabama, Tennessee, and South Carolina come in direct competition with producers in Georgia."

The Georgia Commission found that their investigation showed very keen competition between the producers in interstate and intrastate markets (R. 79).

The Commission, at page 106, stated that most of the interests represented in the first hearing advocated the prescription of joint line arbitraries, adding:

> "The fact is we have never prescribed for general application in any territory one scale for both single line and joint line hauls of this traffic."

The Commission, in its second report, held (R. 170):

> "Because of the close competition and the large figure which the rate cuts in the price of the commodity here involved, slight additions in the rate are found to affect vitally the business done. Hence the necessity, from the standpoint of shippers, of substantial equality between the rates under similar circumstances, to prevent discrimination between intrastate and interstate commerce."

In its order of March 13, 1928, the Georgia Commission found that (R. 79):

> "The investigation which we have made shows very keen competition between the producers of all these materials at the principal markets, both inter and intrastate, the producers in Georgia coming in direct competition with pro-

ducers in Alabama, Tennessee and South Carolina. In our opinion, to approve the gradation of the scale prescribed by the Interstate Commerce Commission would work great injury and damage to shippers and carriers on Georgia intrastate traffic, and for that reason we are prescribing a revised scale in order that all interests may be preserved."

The Interstate Commission approved the rates for single and joint line hauls in the case of Sand and Gravel from Stations on the C. & W. C. Railway, 83 I.C.C. 436, decided October 27, 1923.

It was, of course, within the jurisdiction of the Interstate Commission to prescribe such rates, fares, charges, classifications, regulations and practices as might be necessary in its judgment to remove the discrimination complained of (Section 13, paragraph 4 of the Act).

THIS CASE WAS SUBMITTED TO THE INTERSTATE COMMISSION BY ALL PARTIES ON THE BASIS THAT THE COMMISSION SHOULD FIND A PROPER UNIFORM SCALE

Uniformity of Conditions

We contend that this case was submitted to the Interstate Commission by common consent of all parties to the record, especially including Georgia Public Service Commission, upon the premise that there should be uniformity of rates on these commodities throughout the southern territory and that the conditions in that territory were "sufficiently similar to warrant a uniform rate level on these commodities" (R. 51).

We further contend that, being thus submitted, it was in fact presented to the Commission for the determination of what scale of rates should be used for uniform application throughout the southern territory, which, of course, includes the State of

Georgia. The subject was submitted to the Commission by all parties concerned upon the basis that the conditions were at hand to justify the finding by it of the proper level of rates for uniform application.

The Commission found in its first report as follows (R. 51):

> "As has been indicated, there is quite general agreement of both shippers and carriers that operating and other transportation conditions on standard lines throughout the territory here involved, with the exception of the Florida peninsula, *are sufficiently similar to warrant a uniform rate level on these commodities.*" (Italics added.)

The Commission then states:

> "This was the conclusion that we reached with respect to all of southern territory, other than the Florida peninsula, in Southern Class Rate Investigation, supra, (100 I.C.C. 503) and also in Brick and Clay Products in the South, 88 I.C.C. 543, and Fertilizers between Southern Points, 113 I.C.C. 389. In those proceedings no distinction was sought in rates as between branch lines and main lines, and none is sought here. *We are of the opinion that there should be a uniform rate level upon the commodities in issue over standard lines within the territory involved,* excepting the Florida peninsula. The special contention of the Louisville & Nashville that higher rates are justified upon its lines between Etowah and Marietta is hereinafter considered." (Italics added.)

At page 32 the Commission found:

> "*The complainants and the Georgia Commission advocate uniform scales, but propose a lower scale for certain of these commodities than for others. The Georgia Commission advocates its present scales as reasonable for application throughout the territory here considered.*" (Italics added.)

The persons referred to as the complainants in this case are the shippers who had filed complaints, as in Nos. 17699 and

17699 Sub. No. 1, Roquemore Gravel Company and Alabama Sand and Gravel Company; in Nos. 17763 and 17689, Roquemore Gravel Company; and in Nos. 17764 and 17764 Sub. No. 1, Dixie Sand and Gravel Company.

At Record 256 Commissioner Lewis submitted certain questions to all the parties. No. 6 was:

> "Is it agreed that the operating and transportation conditions throughout the general territory here involved are similar?"

The parties who had entered their appearance answered (R. 259):

> "Yes, except as to the Peninsula of Florida, as to which it is agreed that exceptional treatment is justified, and except as to short lines, the Louisville & Nashville Railroad reserves the right to make a showing in behalf of the Louisville & Nashville Atlanta Division Old Line."

We are not concerned in this case with the peninsula of Florida.

In its second report the Commission found (R. 110):

> "Upon brief filed in this proceeding on behalf of the Georgia Commission it is stated:
>
> " 'The Georgia Commission has not claimed, and is not here claiming that there should be a different basis of rates on intrastate commerce in Georgia than on interstate traffic into Georgia and out of Georgia or across Georgia. It is simply the position of the Georgia Commission that the rates required to be maintained by its order and the rates now in effect within the State of Georgia are just and reasonable rates, sufficiently remunerative to the carriers, and not discriminatory against or prejudicial to interstate commerce or preferential to state shippers.'
>
> "As heretofore stated, we found in the original report that there is no transportation reason for the maintenance

of a basis of intrastate rates on these commodities within Georgia different from that there found reasonable for interstate transportation.

"We find that the circumstances and conditions affecting intrastate transportation within Georgia and interstate transportation between points in Georgia, and from points in other states, in southern territory, except Florida, to points in Georgia, are substantially similar."

At page 105 of the record the Commission stated that:

"They (certain shippers) urge the establishment of a uniform basis of rates for application to both intrastate and interstate traffic, and *counsel for these producers urges on brief that this uniformity should be here accomplished by placing the intrastate rates on the approved interstate level.* It is argued that if the rates on this traffic within Georgia should here be permitted to continue on a lower level than the interstate basis the result will be to disrupt the entire rate situation in other southern states." (Italics added.)

The Georgia Commission's scale of March 13, 1928, which is under attack in the second order of the Commission, was not defended on the ground of lack of uniformity of conditions. The grounds upon which these rates were defended in the Commission and in the court have been set out at page 4 hereof. (See R. 105, 106 and 163-4.)

It will be noted that each one of these defenses urged by the Georgia Commission before the Interstate Commerce Commission and before the court is consistent with the Georgia Commission's position previously quoted that the rates on these commodities should be uniform throughout the territory called in these proceedings southern territory and hereinbefore defined.

On the subject of uniformity of rates throughout the territory, Mr. E. M. Price, Rate Expert of the Georgia Commission,

testified beginning at page 599 of the record. At page 602 he said:

> "As I have already stated, a very careful study was made, not only of the rates existing in Georgia, but throughout this territory, and in prescribing these rates the Georgia Commission feels that they are responsible, not only for Georgia intrastate application, but could well be used as a measure for interstate application throughout the Southern Territory."

At page 607 the witness said:

> "As I stated in the beginning of my testimony, the Georgia Commission feels its responsibility to the carriers in Georgia, and in making the revisions, which have already been accomplished, the Commission has endeavored to prescribe rates that would be reasonable throughout the territory, regardless of the effect of the Georgia interstate (intrastate?) situation," etc.

At page 608 the witness testified:

> "Now, Mr. Commissioner, with regard to the charge that the Georgia rates discriminate against interstate commerce, we do not deny that there are some rates applying interstate into Georgia that are higher than the Georgia scale and this is illustrated by my exhibit (Exhibit No. 244), but it must be remembered that prior to the effective date of the Georgia rates there were a great many interstate rates into Georgia much lower than the Georgia rates, which would have created violent discriminations against Georgia if they had not been brought up to the level of the Georgia rates, and further that the carriers in making their interstate revision only revised such rates as were lower than the Georgia scale and, so far as we know, made no revision of their rates that happened to be higher than the Georgia scale."
>
> "The Georgia scale represents as nearly as practicable a general level of what might be considered as the going

rates on these materials in the Southern Territory, and as applied to Georgia traffic represent material increases in carriers' revenues, and in our opinion if applied inter and intrastate throughout the Southern Territory, would cause increases in revenues."

We have heretofore quoted from the Georgia Commission's order of March 13, 1928 (R. 222), to the effect of the keenness of competition, both interstate and intrastate, for the commodities involved, and that the Georgia producer comes in direct competition with the producers in Alabama, Tennessee and South Carolina. It is quite apparent from this order that the Georgia Commission proceeds upon the theory that there should be uniformity of rates, but the Georgia Commission claims that (R. 223):

"Should we approve the joint line differentials for application intrastate in Georgia which have been approved by the Interstate Commerce Commission for interstate application in Docket 17517, it would result in discrimination between the producers of these materials within the State of Georgia, and would place the producers in Georgia at a great disadvantage with their competitors in the States of Alabama and Tennessee, this condition being brought about on account of the location of the producing plants in Georgia, and the necessity for joint line movement to points of consumption that are reached by single line movement from producing points in other States. The rates which we are approving in the following Order, in our opinion, are just and reasonable, and will not be preferential to Georgia producers, or result in undue discrimination against interstate producers."

Mr. Price, Rate Expert of the Georgia Public Service Commission, testifying for the Commission, introduced his exhibit No. 244, which had many sheets covering many kinds of comparisons of rates and clearly showing that the purpose of the Georgia Commission was not to avoid uniformity of rates, inter-

state and intrastate, but to insist upon the Georgia Commission's method of procuring that uniformity as against the Interstate Commission's method of procuring it, and it is our contention that this case was submitted to the Commission on the theory that if there were not uniform rates throughout what is called the southern territory, unjust and unreasonable discrimination would be worked and that that premise being admitted, the Georgia Commission insisted that its method of producing that uniformity was better than the Interstate Commission's method, and the Interstate Commission insisted that its method was better than the Georgia Commission's method. So that the case was a contest, based upon premises in which all parties admitted the necessity for uniform rates and that the absence of uniform rates would work unjust and unreasonable discrimination of the kind relievable by the Interstate Commission under sections 3 and 13 of the Act. In that contest one or the other of those Commissions had to be supreme. The Interstate Commission, in such circumstances, was, of course, under the decisions, supreme. The purpose of the Georgia Commission is stated in its order of March 13, 1928 (R. 222), where the Georgia Commission said:

> "We are in accord with the views of the Interstate Commerce Commission that the intrastate rates should not cause undue discrimination against interstate commerce, neither should interstate rates result in undue discrimination against intrastate commerce, and with this end in view, it is the purpose of this Commission to prescribe such rates as will permit of free movement and competition both inter and intrastate."

We construe that as an admission of the need of uniformity of rates; a statement that a rate system was necessary which would "permit of free movement and competition both inter and intrastate." We must bear in mind that this is the statement

of the State of Georgia and that it was putting its case on that basis.

This is somewhat emphasized by the fact that in the order of February 25, 1925, and repeated in the order of March 13, 1928 (R. 220), is a provision to the effect that:

> "In no instance shall the rates on the commodities covered by this order be higher, between any points in Georgia than the interstate rates contemporaneously in effect on the same commodities between points in Georgia and points in other States, for the same or greater distance, over the same line or lines, the haul between the Georgia points being included in the longer interstate haul."

The Georgia Commission was thus using the Interstate rate, fixed by the Interstate Commission in 17517, as the maximum standard of rates on these commodities.

When we consider the findings as to keenness of the competition between markets, the many points of production of the commodities, the competition of the commodities between themselves, the lowness of their price, that slight variations in rate charges control the market, and that the Georgia rates were admittedly lower in many instances than the Interstate rates which had been previously provided in No. 17517 and which were then in effect, it will appear that the Interstate Commission's findings, intermediate and final, were not only justified but demanded.

QUANTITIES, REVENUES AND VALUES

QUANTITIES AND REVENUES

The Commission found that exhibits submitted showed that the Class One railroads, during the year 1924, originated in the Southern District, exclusive of the Pocahontas Region, 23,700,740 tons of the commodities which are classed under

the general description of clay, gravel, sand and stone; that this tonnage was exceeded only by that of the products of the forests and by bituminous coal.

At page 320 of the record the witness Doss testified in substance that the total movement of these commodities over the Atlantic Coast Line in 1922 was 1,825,702 tons, which was 11.1 per cent. of the total tonnage handled by that road that year; that in 1923 it handled 3,047,292 tons, which was 15.2 per cent. of the total tonnage handled; that in 1924 it handled 3,750,195 tons, which was 18.1 per cent. of the total tonnage handled; that for the first ten months of 1925 it handled 4,452,519 tons, which was 22 per cent. of the total tonnage handled during those ten months; that the total revenue accruing on this 1925 tonnage was $4,074,316.02, an average of 91.5 cents per ton; that the tonnage on these commodities exceeded by more than 1,300,000 tons the tonnage of the next ranking commodity, while the revenue ranked fifth in the list; that from the standpoint of both tonnage and revenue, this traffic is of very great importance to the Atlantic Coast Line. The Commission made corresponding findings in its first report (R. 28).

The witness Doss on the next hearing (R. 625-6) brought this tonnage down to additional years, saying in substance that for the first eight months of 1928 the Coast Line handled 2,572,417 tons of these commodities, representing 18.6 per cent. of the total tonnage; that during the same period of 1927 it handled 3,517,513 tons, representing 22.7 per cent. of the total tonnage; that the revenue on the tonnage handled for the first eight months of 1928 approximated $2,100,000, and for the first eight months of 1927, $3,220,000; that the revenue on these commodities represented approximately 6.5 per cent. of that carrier's total freight revenues.

The Interstate Commission in its second report of December 9, 1929 (R. 100), found that during the four months period ended April 30, 1928, 1289 shipments of commodities moved exclusively over the line of the Southern Railway between points in Georgia and that that line participated in the joint line movement of 3111 shipments between Georgia points. The Georgia, Southern & Florida Railway originated and delivered 124 shipments and participated in the joint line movements of 583 shipments between Georgia points. During the same period the entire Southern Railway system originated and delivered 12,817 and participated in the joint line movement of 14,977. The Commission stated that these figures indicate a substantial joint line movement of this traffic. The Commission then states that, if the rates fixed by the Commission in Docket No. 17517 had been applied to the 2342 carloads which originated in Georgia on the Southern Railway, including shipments received from the Gainesville & Northwestern Railroad at Gainesville, Georgia, during the four months ended August 31, 1928, the revenue would have been $12,000 greater than that produced by the application of the Georgia scale, adding that "this is equivalent to $36,000 computed on an annual basis."

The Commission found that the Seaboard Airline during the year 1927 handled 5,213,183 tons of these materials, which was equivalent to 25.5 per cent. of its total tonnage for that period and that during the five months ended May 31, 1928, it handled 14,892 tons of slag from Alabama producing points to points in Georgia. The application of the Georgia scale to this movement would have produced $617 less revenue.

During the six months ended June 30, 1928, 23,096 tons of sand and gravel moved from Alabama producing points to Georgia destinations, mostly from Montgomery. The application of the Georgia scale to this movement would have produced $2,511 less revenue, or a decrease of 7.7 per cent. During the

months of May, June, July and August, 1928, the period immediately succeeding the date when the Georgia scale became effective, 50,687 tons of these commodities, originated at points in Georgia on the Seaboard Airline, and moved to destinations in Georgia. The charges were $7,307 less than they wuold have been if based on the Interstate scale; that was equivalent to about $22,000 computed on an annual basis.

During the year 1927 the Georgia Railroad, Western Railway of Alabama, and Atlanta & West Point Railroad handled 507,753, 714,148, and 397,380 tons of these commodities, which constituted 17.03, 29.99 and 20.78 per cent. of the total tonnage handled by each respectively during that period.

The Georgia Railroad during the four months ended August 31, 1928, handled 100,515 tons of these commodities moving to Georgia points. The charges on those commodities were $9,148 less than would have accrued on the basis of the Interstate scale. That was equivalent to $27,500 computed on an annual basis.

The witness Doss, in his exhibit 57, showed the carriers' proposed scales and the Georgia Commission's scales applicable for single and joint line hauls on these commodities and the earnings in mills per ton per mile thereunder (R. 349), and he showed that for distances beyond 200 miles the earnings under the carriers' proposed single line scale are less than 7 mills, and beyond 240 miles under their proposed joint line scale the earnings are also less than 7 mills, and that he did not consider traffic very desirable if it pays less than 7 mills per ton per mile, especially for distances as short as 200 miles; and if the Georgia Commission's single and joint line scales were extended at the same rate of progression as was observed for distances beyond 260 miles, the rate at 500 miles would be $1.90 per ton, or 3.8 mills per ton per mile; at 800 miles the scale would be

$2.40 per ton, or 3 mills per ton per mile; and at 1,040 miles the scale would be $2.80 per ton, or 2.7 mills per ton per mile; and that under the Georgia Commission's scale the railroads' earnings would get down as low as 2.7 mills per ton per mile.

VALUES OF THE COMMODITIES

The Commission found in its first report (R. 19) as follows:

> "Summarizing the testimony of various witnesses upon this question it appears that the prevailing average range and the general average of prices in cents per net ton at shipping point approximate those shown below.

Commodity	Average range Cents	General average Cents
Sand	20 to 50	35
Clay gravel	25 to 45	35
Washed gravel	40 to 80	60
Crushed rock	105 to 165	135
Slag (crushed and screened)	As high as 135	75
Slag (bank run)	20 to —	—"

The Commission shows that sand at Montgomery is a by-product and often sells for less.

In its first report (R. 43) the Commission found the per ton mile earnings expressed in mills under the single line and joint line rates proposed by the carriers and that the Atlantic Coast Line represented that any traffic which pays less than 7 mills per ton mile, especially for distances as short as 200 miles, is not considered very desirable. This is amply supported by Mr. Doss' testimony, quoted above.

USES TO WHICH THE COMMODITIES INVOLVED ARE PLACED

At page 95 of the record the Commission found:

"The commodities under consideration are used chiefly in the building of highways and in concrete construction work. They are also used for railroad ballast."

The same report also shows that because of highway and structural development taking place in Georgia that State is increasing in importance as a market for these materials. The uses to which these commodities are placed add very greatly to the necessity of making the order statewide. Highway construction is likely to be carried on constantly and for many years throughout the State. Such work is by its very nature constantly moving. The progress of highway construction may well change the destinations for the same piece of construction from period to period. The use of these materials in concrete construction and in other structural work and in railroad ballast contributed to the same result. Added to this the Commission found that these products are produced at numerous points in Georgia and neighboring States. Appendix A (R. 63-66) shows the points of production of these commodities in Alabama, Georgia, Mississippi, South Carolina, Tennessee, Virginia and North Carolina. An order less than statewide as to these commodities would have been useless. In the trial of the case it was submitted upon the basis of the need of uniformity between all parts of the State. The question was submitted as a statewide proposition by all parties concerned. In the admissions of the need of uniformity there was no reservation of that uniformity to limited parts of the State of Georgia.

The schedule of rates fixed by the Interstate Commerce Commission in Docket 17517 were stated to be in effect, intrastate and interstate, in the States of Alabama, Tennessee, Kentucky, North Carolina and South Carolina in the petition of the complainants in opposition to the petition to reopen the general investigation (R. 239).

EXTENT OF THE INVESTIGATION BEFORE THE COMMISSION

Historically the controversy in this case began on the 14th of July, 1921, when the Georgia carriers submitted to the Georgia Public Service Commission a proposed scale of freight rates, including scales for these commodities (R. 600).

On November 26, 1923, the Georgia Public Service Commission submitted to the shippers and carriers testative scales of rates on gravel, sand, etc., with request for their views and criticisms (R. 600).

On February 25, 1925 (R. 2), the Georgia Public Service Commission issued its order in the revision of freight rates between points in Georgia on these commodities. This order prescribed a scale somewhat lower (5 to 10 %) than had been provided by the Georgia carriers for a single line application on washed gravel, crushed stone and slag.

On April 1, 1925, the revision of the Georgia intrastate rates became effective (R. 601).

On June 5, 1925, the Atlantic Coast Line Railroad Company and certain other Georgia lines requested the Commission to enter into an investigation of the effect of the Georgia Commission's rates (R. 188).

On August 25, 1925, the Interstate rates were revised by the carriers, through individual tariffs, making those interstate rates no lower than the Georgia intrastate rates under the order of February 25, 1925. Those revisions were protested by certain interstate shippers. The Interstate Commission declined to suspend the tariffs.

On October 5, 1925, the Interstate Commission, on motion of carriers, entered its order directing an investigation.

GEORGIA PUBLIC SERVICE COMMISSION

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Map showing the points
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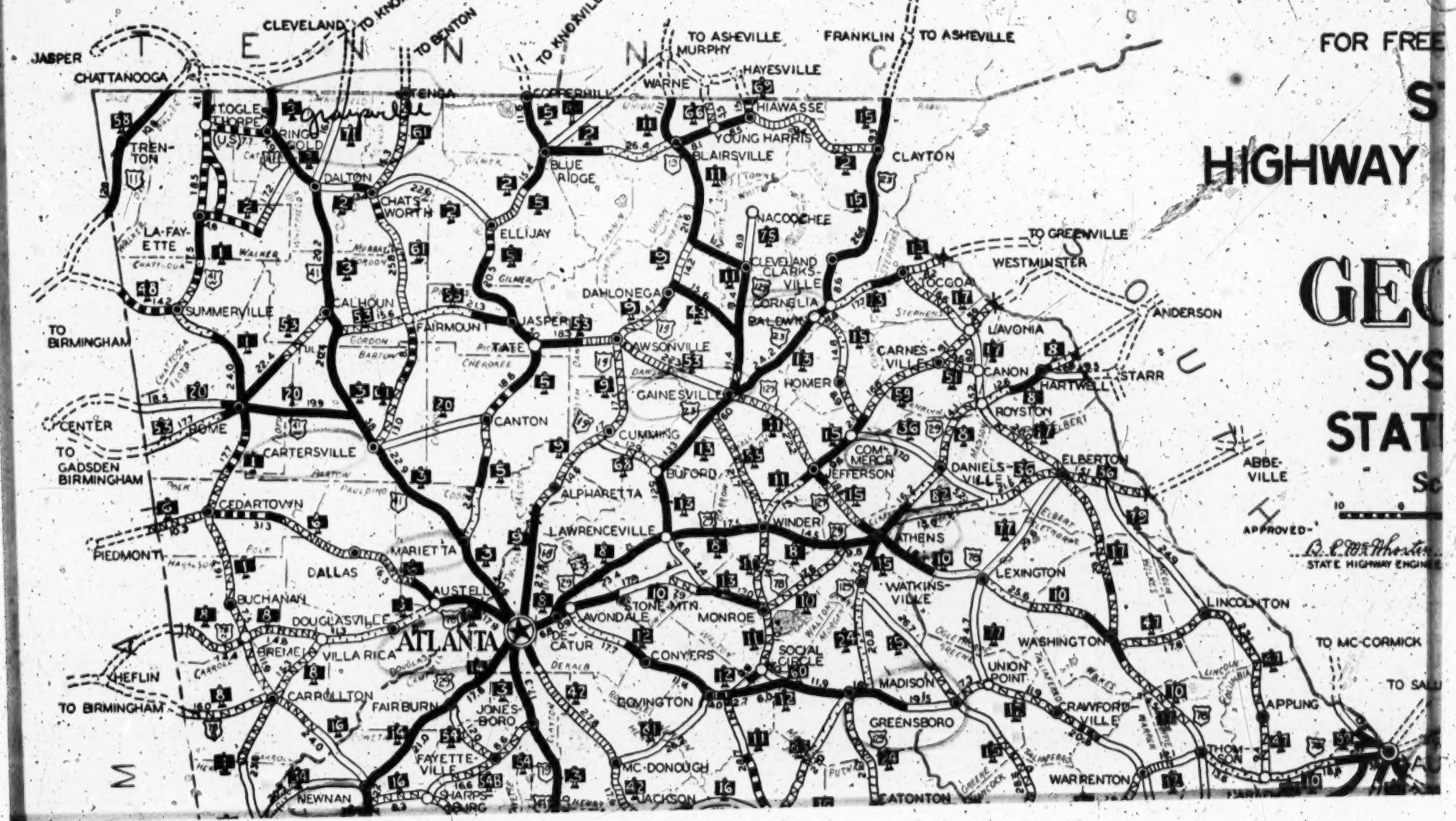
Report, Record 64.



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GEORGIA PUBLIC SERVICE COMMISSION

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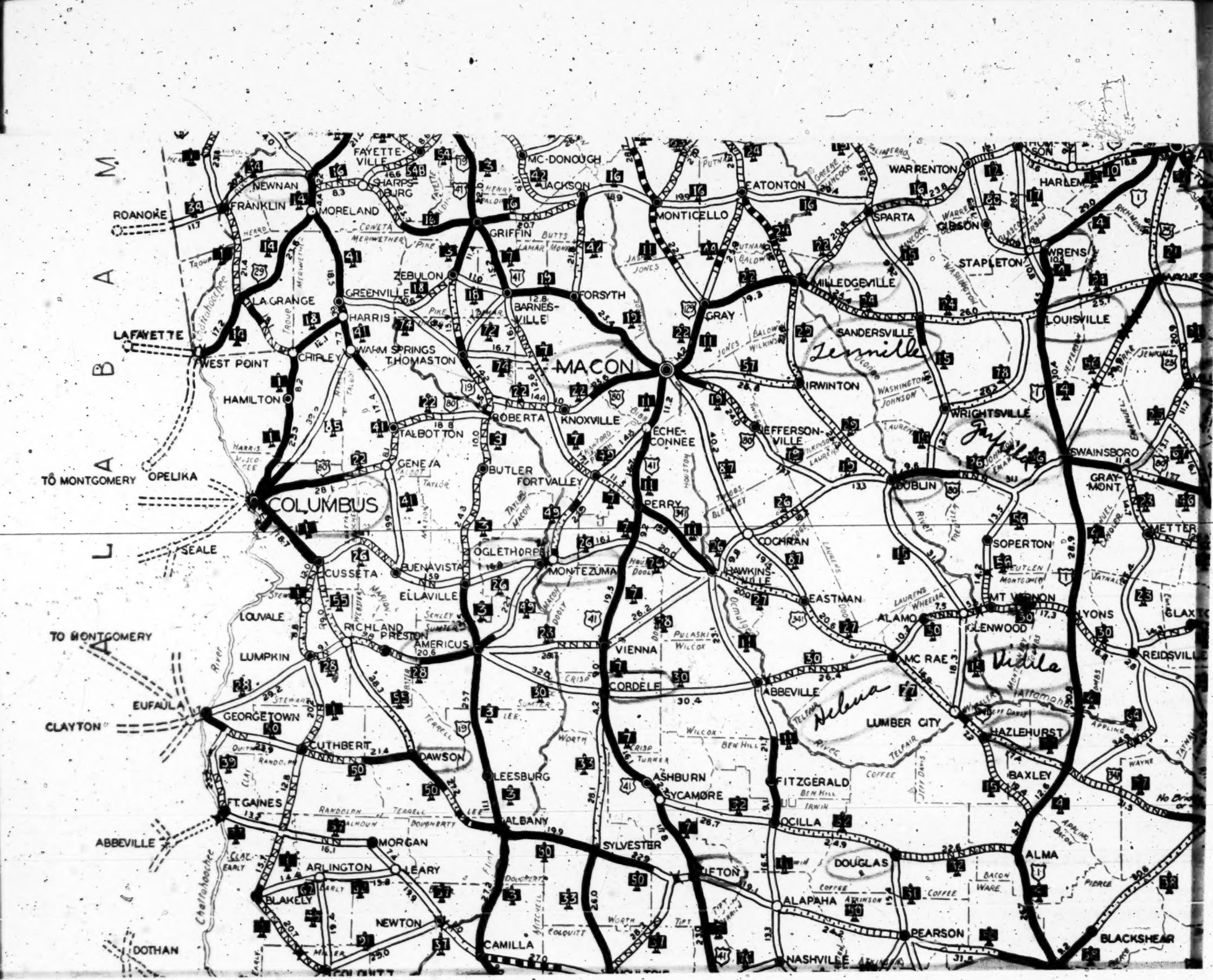
UNITED STATES

SAND AND GRAVEL CASE.

Map showing the points in Georgia producing commodities involved in this case, as found in Commission's Report, Record 64.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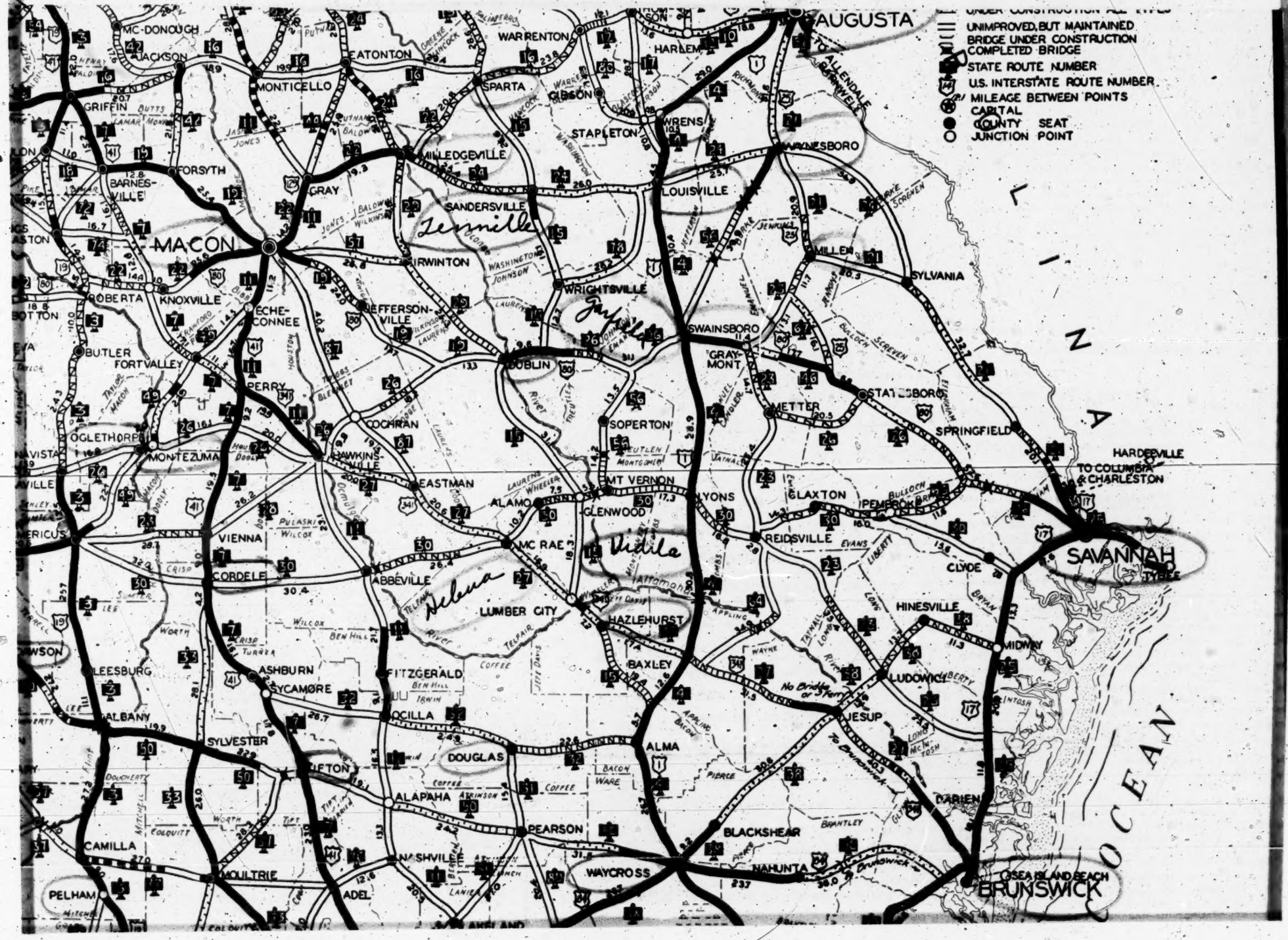
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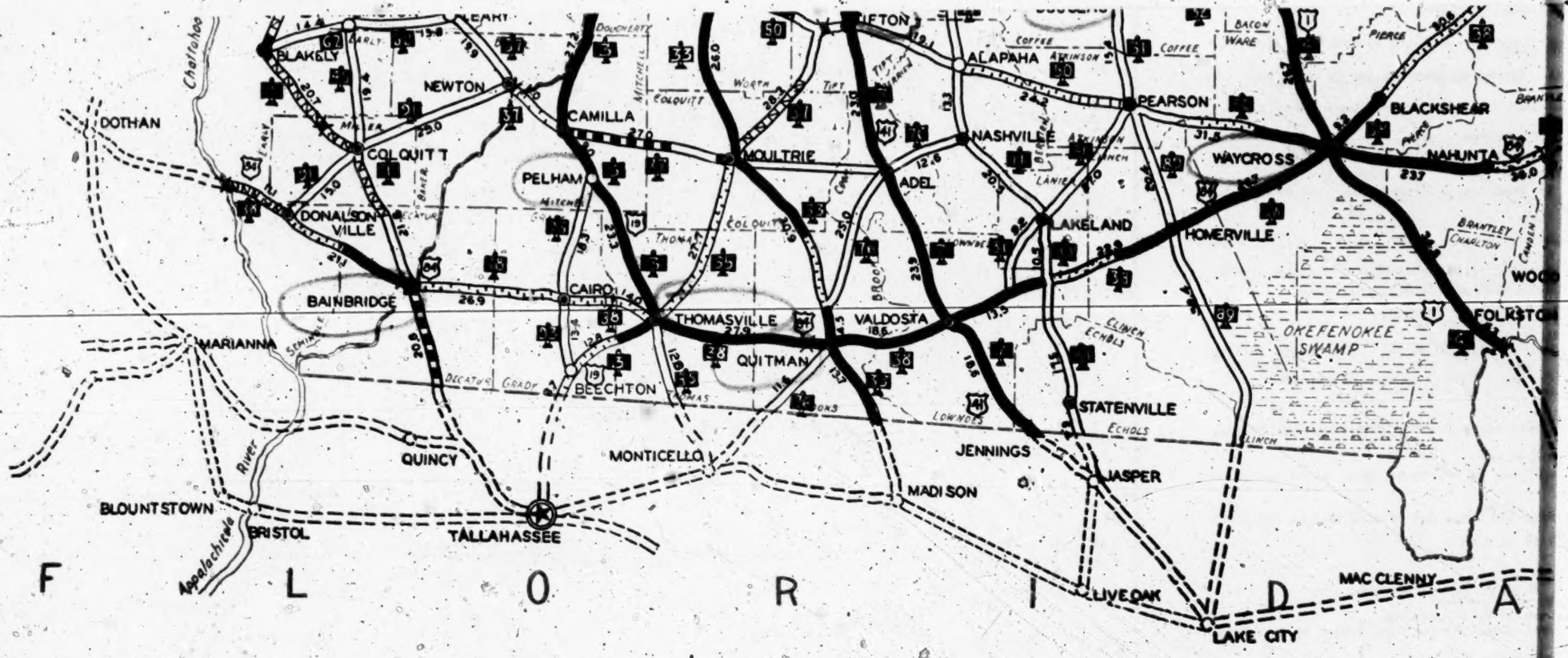
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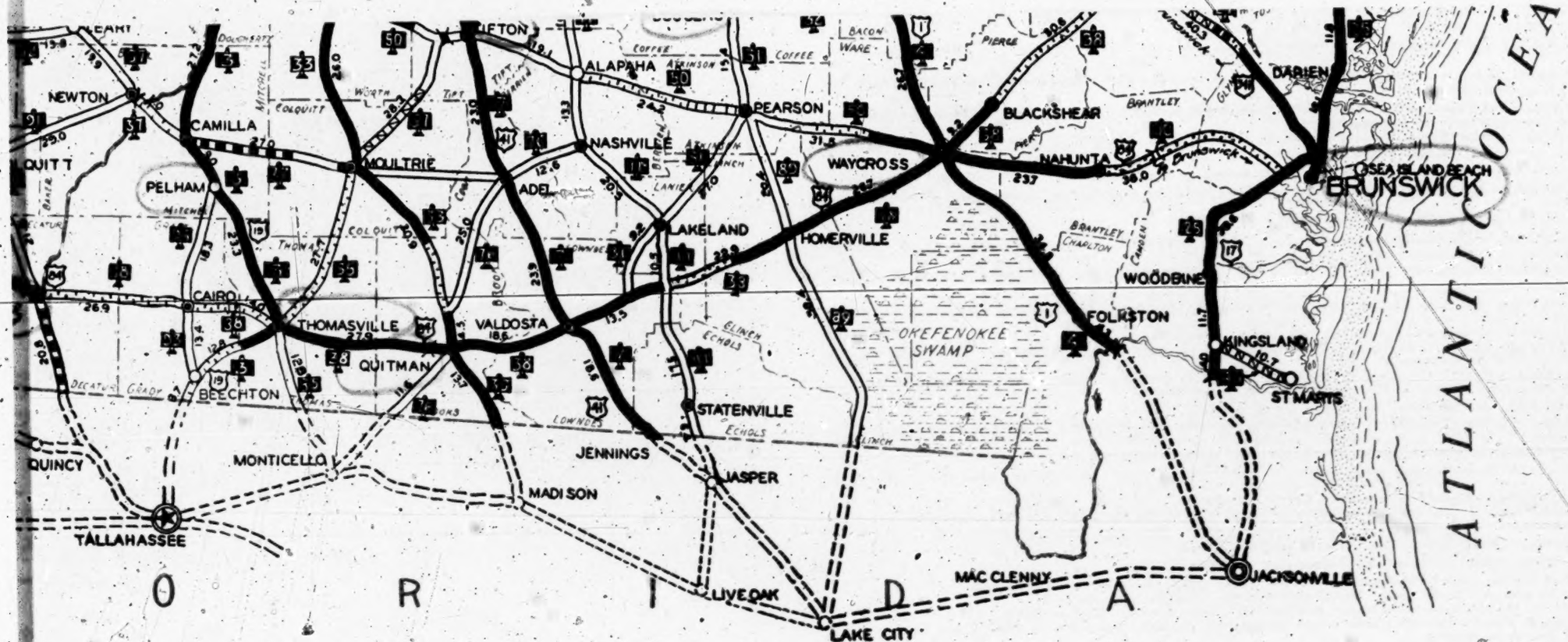
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GEORGIA PUBLIC SERVICE COMMISSION

vs.

UNITED STATES

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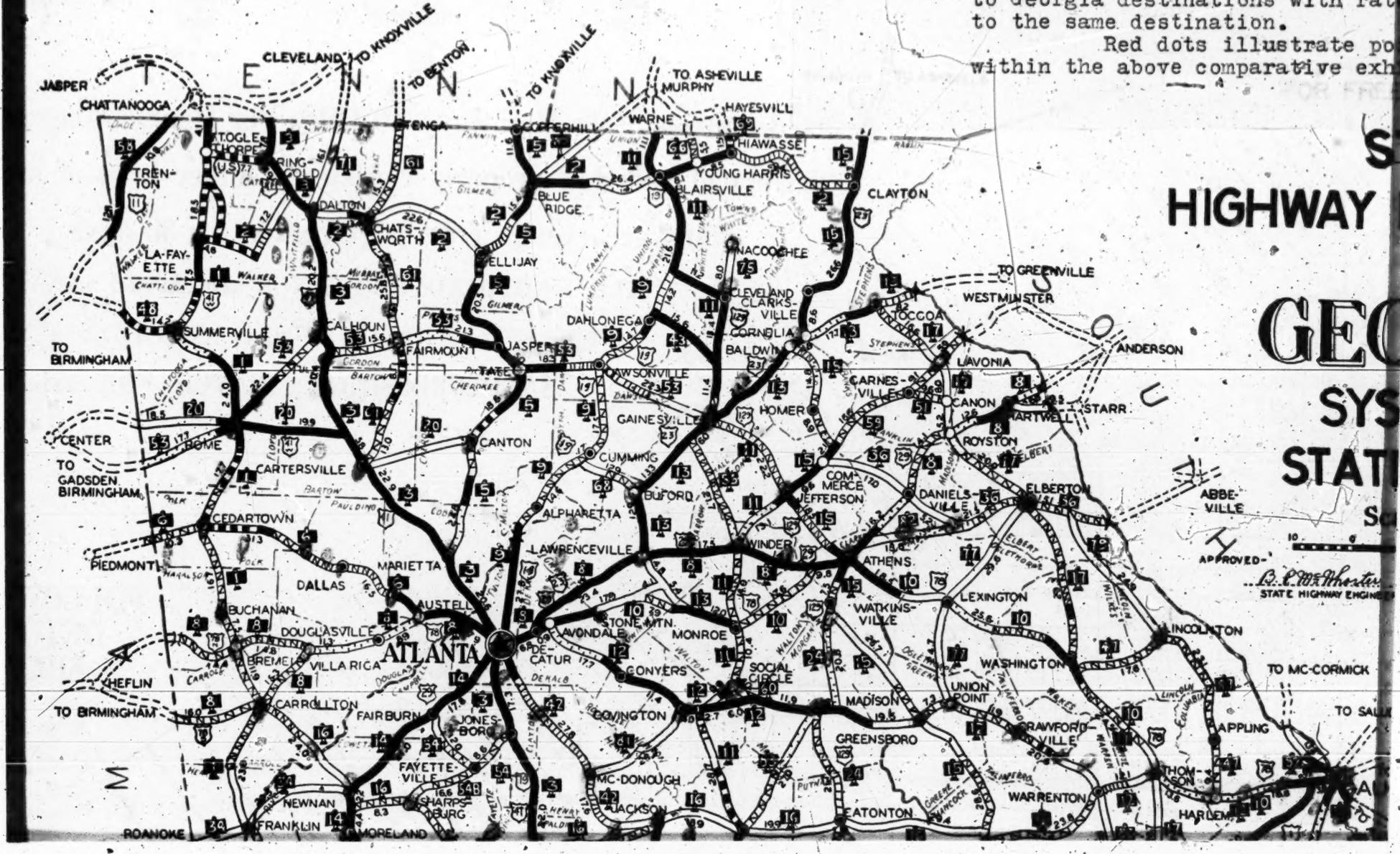

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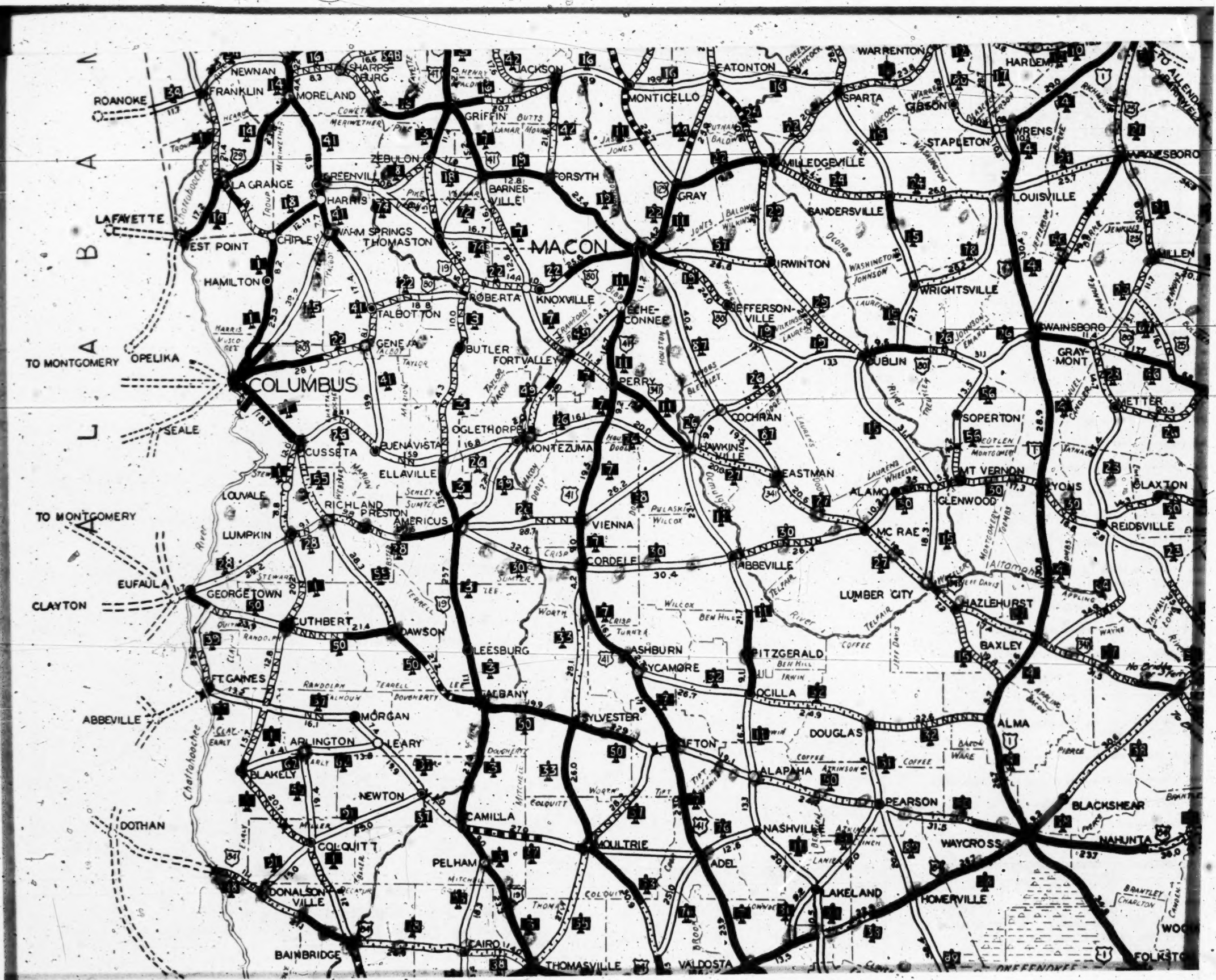
SAND AND GRAVEL CASE.

Points of destination within the State of Georgia considered by Interstate Commerce Commission in its Docket No. 17517 used in comparing rates from without the State of Georgia to Georgia destinations with rates from Georgia shipping points to the same destination.

Red dots illustrate points of destination included within the above comparative exhibits.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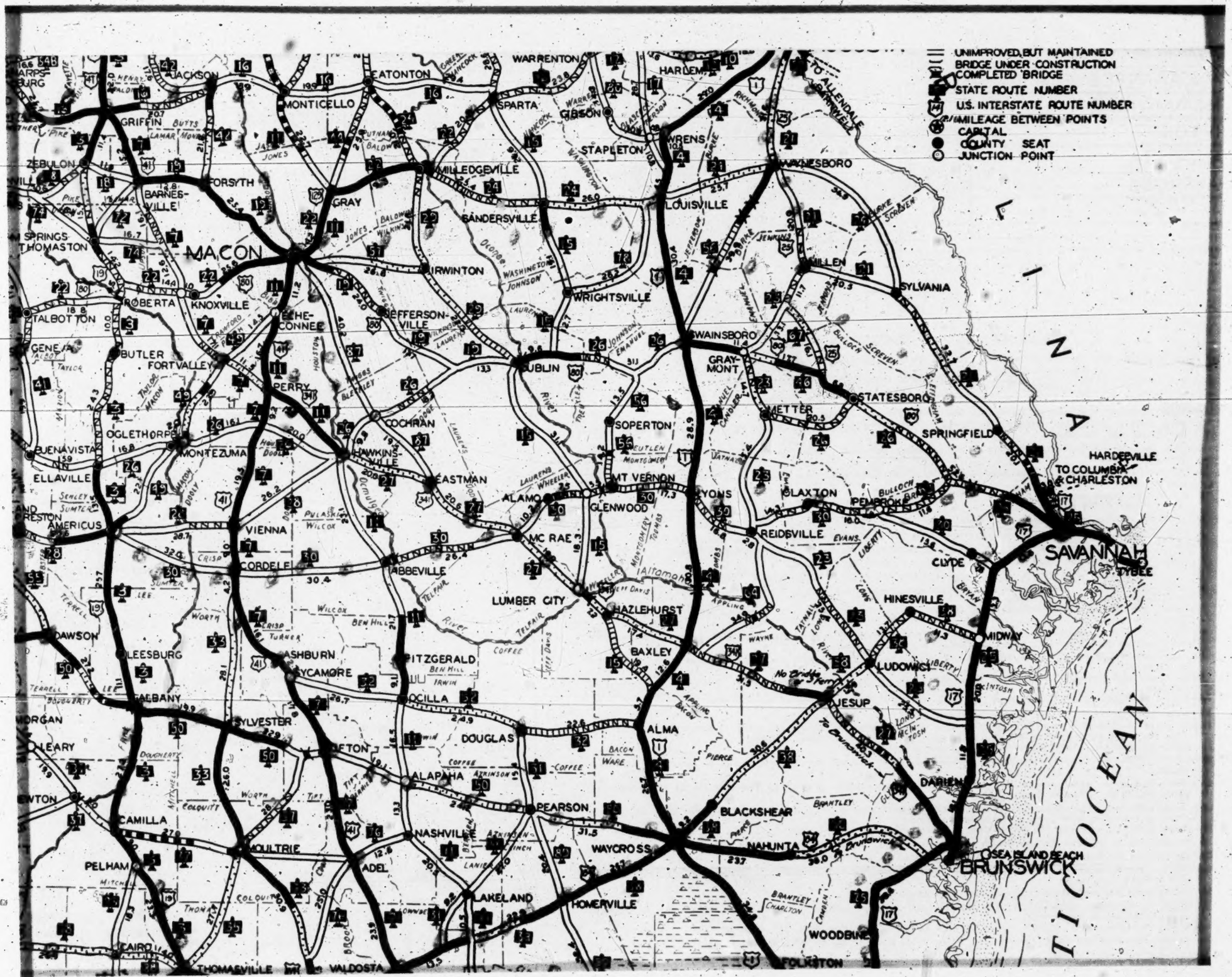
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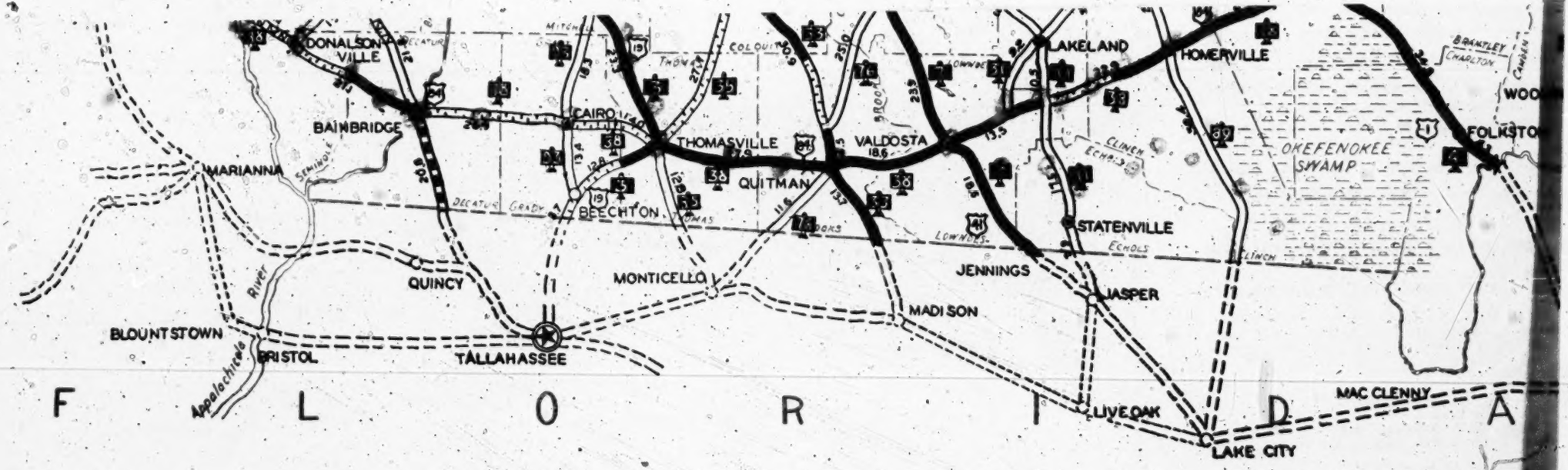
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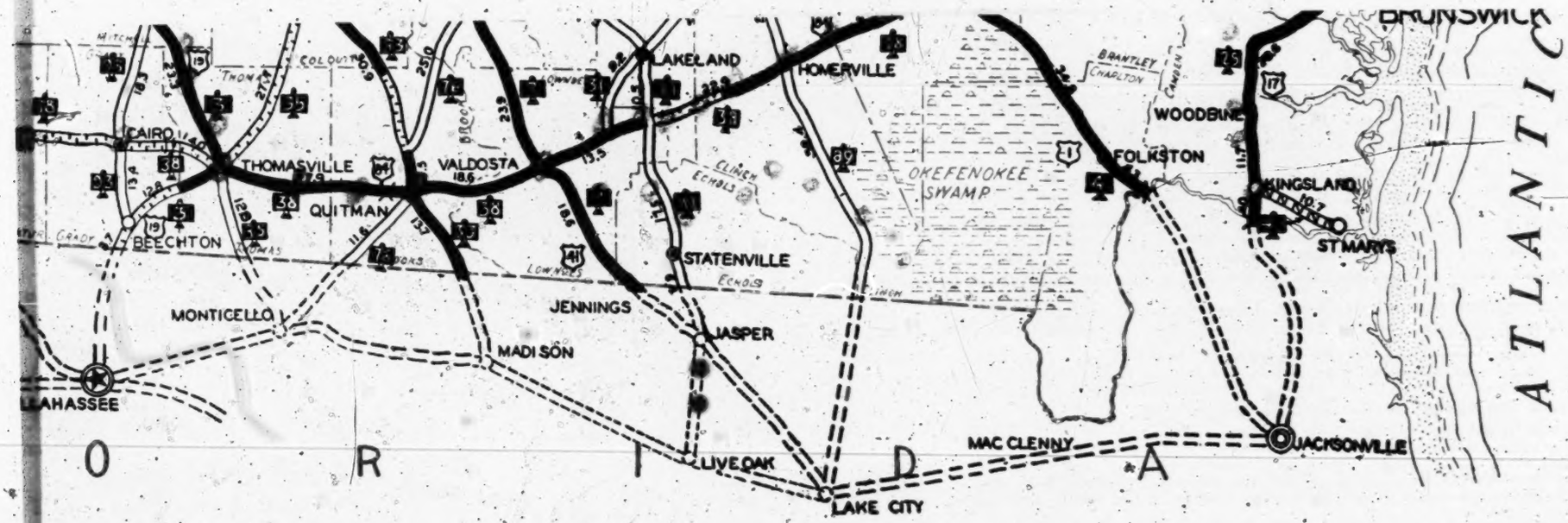
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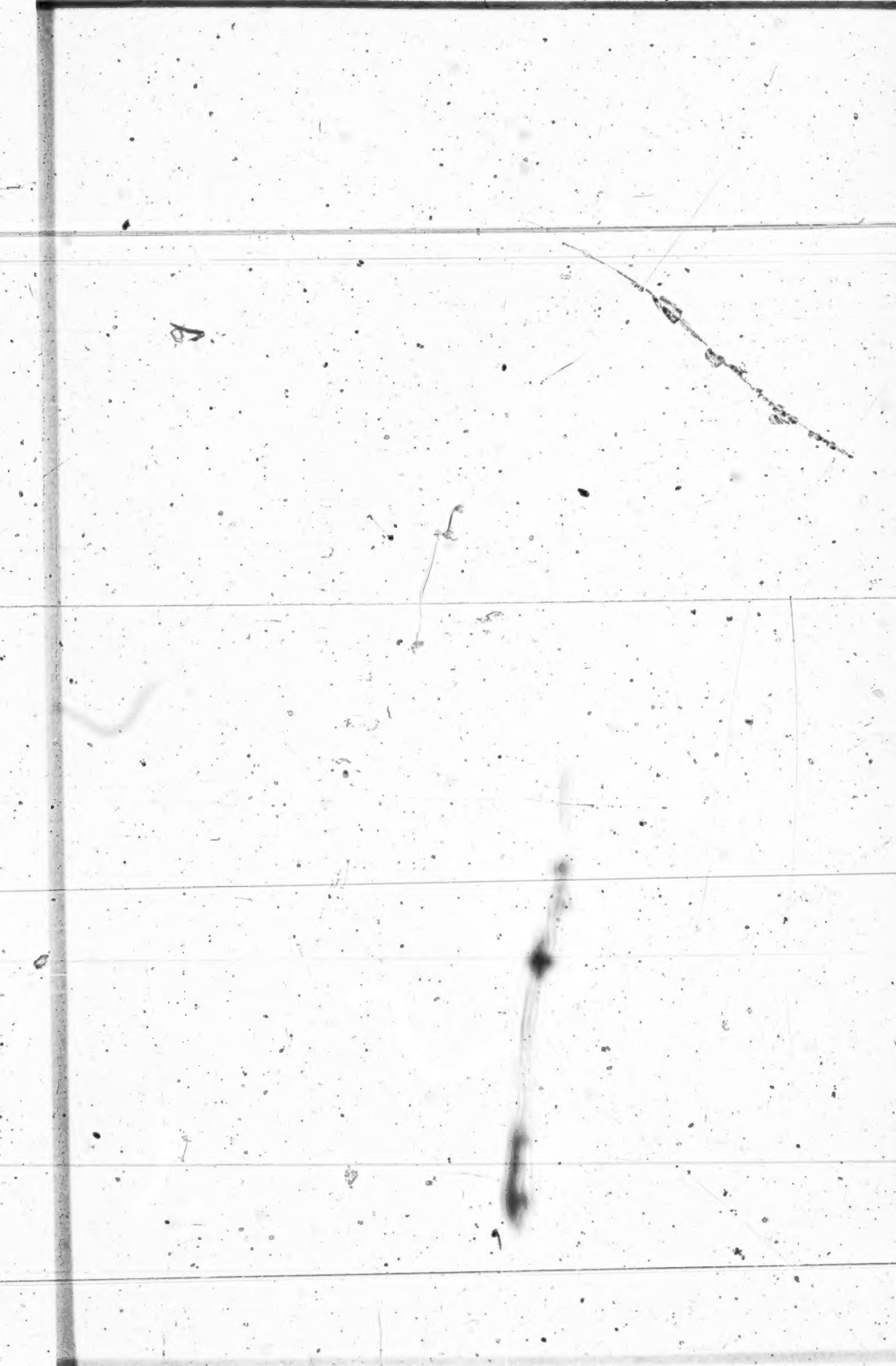

Thereafter, on December 2, 1925, the Roquemore Gravel Company and Dixie Sand & Gravel Company of Chattanooga filed complaints with the Interstate Commission attacking the Georgia rates as discriminatory against interstate commerce and against places and persons and traffic (R. 186).

The Commission's first report was rendered on January 21, 1927 (R. 12).

The Georgia Commission entered its second order dated the 13th of March, 1928, effective May 1, 1928. That order changed the rates which the Georgia Commission had fixed by its order of February 25, 1925, but did not harmonize with the rates which had been fixed by the Interstate Commission by its order of February 21, 1927 (R. 221).

The Interstate Commission on petition entered its order of the 4th day of June, 1928 (R. 240), reopening the situation. The proceeding was reopened solely for the purpose of finding whether or not the intrastate rates and minimum weights required by the Georgia Commission would cause any undue or unreasonable advantage, preference or prejudice between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce.

We thus see that the Commission ordered an investigation in October, 1925, and made its first report on February 21, 1927 (R. 12); that petition was filed with the Georgia Commission by the carriers, seeking to have the Georgia rates conform to the ones prescribed by the Interstate Commission on the 21st day of February, 1927. The Georgia Commission made its order on March 13, 1928. The Interstate Commission reopened the matter on the 4th day of June, 1928, and made its second report and order on December 9, 1929 (R. 88).

The hearings of testimony began in the original case on February 15, 1926 (R. 251), and continued for several days. Many witnesses were examined and a great many exhibits were filed. The court found that the hearing was undoubtedly full within the requirements of the statutes (R. 164).

In the reopened case a great deal of testimony was again given, beginning November 26, 1928 (R. 612). Complaint was made that the whole subject matter was not reopened for the purpose of contesting anew the question of the reasonableness of the rates which had been fixed in the 1927 order, and that because it was not so reopened a full hearing was not given within the meaning of section 13 (4) of the Act.

The Court held (R. 164-5):

> "We think, however, that such a hearing was here afforded. A full hearing was undoubtedly given prior to the order of Jan. 21, 1927. The identical State rates were not then in existence, but all the questions they raise were in existence and were investigated. New interstate rates were in that very proceeding established as reasonable, and the opinion expressed that as no transportation difference existed, the State rates ought to conform in order to escape future discrimination, but no positive order of conformity was then issued, in order that the State Commission might work the State rates out for itself. This left the proceeding in a manner uncompleted, and certainly proper to be reopened after the State rates were made. Ordinarily, nothing would be then left for examination except whether the new State rates did so conform to the new interstate rates as to escape discrimination. It was found that they did not, and conformity was ordered on a review of the whole record. While the hearing, which is to be considered a single one, lasted for years, we cannot say the evidence taken in any part of it had become stale. If the Georgia Commission had any definite proof of altered conditions, it should have been concretely offered. We discover no

abuse of procedure in reaching the order of Dec. 9, 1929, in the evidence now before us."

The evidence adduced on these hearings showed the locations of many producing points outside of the State of Georgia and in the State of Georgia; it showed the rates from producing points in the State of Georgia and out of the State of Georgia to destinations in the State of Georgia; it showed the mileage between the competitive destinations interstate and intrastate. For instance, Exhibit 100-B contained 48 sheets and showed such shipments to 46 points in Georgia, which were widely scattered throughout the State and fairly representative of the whole situation (R. 623).

The Interstate Commission took certain exhibits introduced by the carriers, showing interstate rates from numerous representative shipping points to representative destinations in Georgia, based on the 17517 scales, and "rates from representative Georgia origins to the same points, which are on the basis of the Georgia Commission's scale; and the amounts by which the Georgia rates differ from the 17517 basis."

The Georgia Commission's scale there referred to is the one of March 13, 1928. The Commission corrected that data and then set it out at page 97. There are 21 illustrations of intrastate rates compared with an equal number of interstate rates, the destination in each case being Georgia. This shows that the Georgia Commission's rates, as compared with the Interstate Commission's rates under scale 17517, are from 5 to 25 cents per ton lower than the Interstate scale, except in one instance when the Georgia scale was 5 cents per ton higher. The Commission declared those places to be "representative destinations in Georgia." The record shows in detail the statewide nature of the investigation. See page 55 hereof. That there was keen competition is admitted both as to commodities and markets; the nature of the commodities and their uses were proved; the

need of uniformity of rates on these commodities was proved and admitted; the low values of the commodities and the vast amounts of them which were being hauled were also proved, and the changing places of delivery follow from the very nature of the traffic.

This finding, supported by the record, would clearly indicate that throughout the State of Georgia there was a discrimination worked in favor of the intrastate shipper as against the interstate shipper, and this although the Georgia Commission admitted that there should be uniformity of rates in these commodities throughout the southern territory, and the declared purpose of the Georgia Commission, of the carriers, of the shippers, and of the Interstate Commerce Commission was to produce a uniformity of rates on these commodities throughout the southern territory.

PART TWO

BRIEF OF THE LAW

POWER OF THE COMMISSION

There can be no doubt about the power of Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against Interstate Commerce.

> "In the exercise of this power, the Congress has given to the Commission authority not only to remove an undue prejudice as between persons or localities, but to establish a statewide level of intrastate rates when this is found to be necessary to accomplish the purpose of the statute."
>
> Florida vs. United States, 282 U.S. 194.

There is, of course, a "dovetail relation" between the provisions of Section 13 (4) (Appendix No. 2) and Section 15a of of the Act; and

> "As intrastate rates and the income from them must play a most important part in maintaining such a system, the effective operation of the Act requires that intrastate traffic should pay 'a fair proportionate share' of the cost of maintenance. And if there is interference with the accomplishment of the purpose of the Congress because of a disparity of intrastate rates as compared with interstate rates, the Commission is authorized to end the disparity by directly removing it."
>
> Florida vs. United States, Ib.

It is recognized that there must be basic or essential findings by the Commission to support the Commission's order. We have pointed out at some length many of the findings made by the Commission, both intermediary and final, and we have undertaken to point out the circumstances in which the hearing was had and to show that there was a common purpose on the part of all parties to the record to find a uniform scale of rates on the commodities here involved, applicable to interstate and intrastate alike in southern territory; and that this was done under admissions of the parties that the circumstances throughout the territory here involved "are sufficiently similar to warrant a uniform rate level on these commodities." We also contend that aside from the admissions, the findings by the Commission based on proper evidence show that the Georgia scale of rates, prescribed by the order of that Commission on the 13th day of March, 1928, worked unlawful discrimination against persons and places and against interstate commerce within the condemnation of Sections 3 and 13 of the Act, as found by the Commission.

We will first discuss the points made by the appellants in the District Court in defense of the said order of the Georgia Commission. We contend that these points are consistent with the admission of the need of uniformity of rates and that the contest between the two Commissions was as to whether the uniformity admitted by all to be needed to remove the discrimination should be accomplished by the adoption of the rate scale provided by one or the other Commission. We make the same contention as to the points made in defense of the Georgia Commission's order in the hearing before the Interstate Commerce Commission.

In its order of March 13, 1928, the Georgia Commission states (R. 222):

> "We are in accord with the views of the Interstate Commerce Commission that the intrastate rates should not cause

undue discrimination against interstate commerce; neither should interstate rates result in undue discrimination against intrastate commerce, and with this end in view, it is the purpose of this Commission to prescribe such rates as will permit of free movement and competition, both inter and intrastate."

This statement, when taken in connection with the statements of the Georgia Commission and the findings of the Interstate Commission heretofore pointed out as to the need of uniformity, appears to be a declaration on the part of the Georgia Commission that its plan of removing this discrimination should be accepted over the plan prescribed by the Interstate Commission.

Of course, when the two Commissions come into conflict over the relation between two kinds of rates as a relation, it is the Interstate Commission which is supreme.

> "The power to deal with the relation between the two kinds of rates as a relation, lies exclusively with Congress. It is manifest that the State cannot fix the relation of the carriers' interstate and intrastate charges, without directly interfering with the former, unless it simply follows the standard set by the Federal authorities."
>
> Shreveport Case, 234 U.S. 354.
>
> Dayton-Goose Creek Ry. vs. United States, 263 U.S. 456, 477, 478.

We further submit that the statements above quoted from the Georgia Commission's order are to be construed as admissions that the differences between the scale of rates prescribed by the Interstate Commission and by itself are sufficient to produce unlawful discrimination of the kind condemned by Sections 3 and 13 of the Act and which the Interstate Commission has the power to remove.

The Georgia Commission's statements in effect claim that the difference between the scale of rates prescribed in its order

of March 13, 1928, and in the Commission's order under 17517, January 21, 1927, constituted a discrimination against the Georgia traffic, and the Interstate Commission claims that this difference constituted a discrimination against the scale of rates which it had found to be reasonable in its report and order in 17517, January 21, 1927. There is no conflict of evidence which we discover in the record, and if there be any, it has been resolved by the fact-finding body, the Interstate Commission. The Interstate Commission has made its report, its findings and its orders. Of course, discrimination is a matter of fact, as this court has frequently decided.

> Note: Virginian Ry. vs. United States, 272; U.S. 658; Tagg Bros. & Moorhead vs. United States, 280 U.S. 420; Pennsylvania Ry. Co. vs. United States, 236 U.S. 351, 361.

In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, we accept the statement that:

> "In dealing with unjust discrimination as between persons and localities in relation to interstate commerce, the question is one of the relation of rates to each other."

and also that:

> "In considering the authority of the Commission to enter the State field and to change a scale of intrastate rates in the interest of the carrier's revenue, the question is that of the relation of rates to income. The raising of rates does not necessarily increase revenue."
>
> Florida vs. United States, 282 U.S. 194.

POINTS MADE BY THE APPELLANTS IN THE DISTRICT COURT

These points are set out at page 5 hereof and at R. 162-3.

A Full Hearing Was Had

We have stated the facts as to the reopening of the petition at page 10 hereof under the title "The Petition of Carriers to the Georgia Commission" and at page 32 under the title "Extent of Investigation before the Commission." The claim that there was not a full hearing is based upon the fact that the Interstate Commission in reopening this case, by its order of the 4th of June, 1928, "reopened the said proceeding for further hearing on the sole question of whether or not the rates and minimum weights required by the Georgia Public Service Commission to be maintained by said respondent carriers on intrastate shipments" of the commodities here involved

> "in relation to the interstate rates and minimum weights prescribed in its report and order of January 21, 1927, in said No. 17517, causes or will cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce" (R. 614).

The appellants apparently desired to reopen the case to retry the question as to whether the rates fixed in proceeding 17517 were themselves reasonable. The trial on that issue had been long. A vast deal of evidence had been received. There is no denial that that hearing was full. It was followed by a petition by the carriers to the Georgia Commission. The Georgia Commission considered that petition and issued its order of March 13, 1928 (R. 220), which did not undertake to remove, but rather increased the discrimination. The Interstate Commission then, on motion of the carriers, reopened the case, as has been shown. The court found that none of the appellants

offered any definite proof of altered conditions (R. 165) in the rate situation since the Commission's report of January 21, 1927. The Commission itself replied to this contention as follows (R. 93):

> "The scope of the further hearing was properly limited to the question indicated. If the contention made on behalf of the Georgia Commission in this regard were sound, then our efforts to secure co-operative action in situations such as here presented instead of bringing about that result, could be made the instrument of burdening this commission with endless investigations covering the same subject matter and would result in litigation being prolonged indefinitely. The contention is without merit."

The rates prescribed are very low. The nature of the commodities is such that the rates change very slowly. The purpose of all parties to the contest before the Commission was to make uniformity of rates throughout the southern territory. The Commission's rates, as we have seen, were in effect in neighboring states. In the presence of the finding of the Commission on this subject, above quoted, and of the action of the lower court thereon, and in the absence of any specific statement of changed conditions by any of the appellants, we submit that the Interstate Commission was right in holding that this contention was "without merit," and that the District Court was correct in sustaining that holding.

SECOND POINT MADE BY APPELLANTS IN THE COURT BELOW

The court below found that the second point made by the appellants was (R. 164):

> "That the order did not stop with prescribing a maximum for interstate rates, but took over from State author-

ity the general function of intrastate rate-making in these commodities for the future."

This contention is based upon the fact that the order of the Commission of December 9, 1929 (R. 115), required the establishment of intrastate rates "which shall not be lower, distance considered, than those *contemporaneously* applicable to the interstate transportation of the same commodities, * * * not exceeding the rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities."

The same point was made in the first hearing and was discussed by the court at Record 165. The contention turned upon the words "contemporaneously applicable" or "contemporaneously maintained" by the carriers in interstate commerce. It was contended by appellants that the word "contemporaneously" related not to the rates in effect by the carriers at the time of the effective date of the order, but to such rates as might be made by the carriers from time to time after the date of the order, thereby moving upwards or downwards intrastate rates for future application without the full hearing contemplated by Section 13 (4) of the Interstate Commerce Act.

The court below in its first opinion held (R. 165-6):

> "Whether the minimum is lawfully prescribed we all think depends on whether the order means by 'contemporaneously' the rates now applicable and now maintained by the railroads, which we think would be a certain and lawfully fixed minimum, or whether it means the rates that may at any time in the future be applicable or maintained by the railroads in interstate commerce. In the latter meaning we think the order would be unlawful because should in the future any of the interstate rates be altered, either by the railroad or by the Commission itself

on the usual proceedings only, a change in the existing State rates would ipso facto result. * * * A majority of this Court are of the opinion that the present order means only to establish as the minimum the interstate rates actually in force at its date. The writer thinks it means to operate automatically in the future whenever interstate rates may be altered, and, that thus intended, it is unlawful. On the ground, however, that it might mean either thing and should, if possible, be so construed as to be lawful, I acquiesce in sustaining it."

In the second order the court said (R. 169):

"The evidence leads us to no different conclusion. We adhere to what was said in the previous opinion."

In considering the meaning of the word "contemporaneously" as used in this connection it must be remembered that the first order of the Commission, which was entered on January 21, 1927, fixed rates for *interstate* transportation of the commodities here involved. The Commission hoped and expected that the Georgia Commission would reconstruct the intrastate rate scale so as to remove the discrimination worked thereby against the scales fixed by the Interstate Commission in the aforementioned order of January 21, 1927 (R. 59, 74). The interstate rates under that order went into effect and were in effect at the time the Commission considered the Georgia intrastate rate situation and on the date of its order of December 9, 1929.

The table of comparisons hereinbefore set out (page 12), taken from page 94 of the record, which is a part of the opinion in the second hearing, compared rates previously prescribed by the Commission in its docket No. 17517 with the Georgia Commission's rates fixed by that Commission's order of March 13, 1928.

It would seem clear, therefore, that the rates referred to as those contemporaneously in effect in interstate commerce

meant those which were filed with the Commission under the order of the Commission entered on January 21, 1927, in pursuance of the Commission's order of that date in Docket No. 17517. The court below (R. 165-6) evidently adopted this view in finding that "the present order means only to establish as the minimum the interstate rates actually in force at its date."

The word "contemporaneously" is a relative one. It means "at the same time;" but, as was said in Mitchell Coal & Coke Co. vs Pennsylvania R. R. Co., 181 Fed. 403, at 411, "at the same time with what?" The court in that case said: "A term is evidently implied which must be looked for in the context and in the subject matter of the statute." The court was considering the expression "contemporaneous service" as used in Section 2 of the Interstate Commerce Act.

The order fixed its own standard and that standard was (R. 115):

> "The rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities in straight or mixed carloads."

We thus relate these words to the standard of rates fixed by the Commission for interstate transportation in No. 17517.

In the Fourth Section Order entered by the Commission in this case, copy of which is attached to this brief as Appendix No. 1, it was provided that the Fourth Section rates "shall not exceed the contemporaneous rates on sand and gravel constructed on the bases prescribed in said report; and shall in no case exceed the lowest available combination." This order permits the carriers, instead of publishing specific routing between points of origin and destination, to publish rules which

would govern the subject, as was allowed by the Commission in Brick and Clay Products, 113 I.C.C. 380, at 382.

Under Section 6 of the Act, every carrier is required to file schedules showing its rates and fares, and under sub-paragraph 3 of this section it is provided that:

> "No change shall be made in the rates, fares and charges or joint rates, fares and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except upon thirty days notice to the Commission and to the public as aforesaid, which shall plainly state the changes proposed to be made in the schedules then in force and the time when the changed rates, fares or charges will go into effect."

When the Commission's order became effective in No. 17517, the carriers filed their schedule expressing those rates.

The court below, in discussing the necessity for certainty in rate-making, said (R. 169):

> "As previously held, a maximum and minimum were undertaken to be fixed by the order of December 9, 1929. The maximum, identical with that previously fixed for interstate commerce in 122 I.C.C. 133, is a scale based on distances, higher for joint-line than for single-line hauls, and is accepted as sufficiently certain and practical. Under it the carriers had on December 9, 1929, established a system of rates between points in Georgia and points in other states which were prescribed as the intrastate minimum. These rates are embraced in several tariffs filed with the Commission and in evidence. They consist of hundreds of point-to-point rates between named places in Georgia and in other States. Then for all points not thus specially named the scale fixed by the Commission as a maximum is established as the rate. It is asserted, and we assume it to be true, that the vast majority of these point-to-point rates are mere applications of the scale

joint or single-line, as the case might be, to the distances involved. So far, therefore, the actual rates are nothing but the maximum scale."

It is claimed that there had been certain departures from the interstate rates. The Commission held that the departures from the maximum scale are all accounted for by application of the order entered under Section 4, or are errors to be corrected (R. 170). There is no contention but that the rates which the carriers purposed putting into effect in Georgia at the time of the first hearing before the District Court and which were actually in effect at the time of the second hearing, had been ascertained under the Commission's order and were upon the basis of those fixed by the Commission in Docket 17517, which were already in effect.

Tariffs had been prepared and filed, expressing the interstate rates, and after the order of December 9, 1929, tariffs were prepared and filed setting up the intrastate rates in Georgia.

There was no claim that the intrastate rates there stated were not in conformity with the interstate rates contemporaneously in effect, distance considered. The point made by appellants in this connection appears to be that, if those interstate rates are changed, the intrastate rates automatically change. The appellees deny that construction, but state that the appellants are in no position to make the point for the reason, if for no other, that no condition has arisen justifying the point; that no effort has been made or is being made to have the Georgia intrastate rates changed with changed interstate rates, and until such effort has been made, there is no occasion for making the point and none for passing upon it. The actual application of the order of December 9, 1929, as above stated, shows that there was no indefiniteness in it, either in the understanding of the carriers or of the Commission. The rates intrastate

in Georgia had been expressed in absolutely definite terms in the tariffs which were filed and accepted by the Interstate Commission before the effective date of the Interstate Commission's order of December 9, 1929.

Carriers cannot change their rates, once filed, without the sanction of the Commission [Act to Regulate Commerce, §15 (7) and §6 (3)]. It is not to be presumed that either Commission will permit the filing of tariffs, effective intrastate, without complying with the requirements of the law. The great probability is that if the Commission should fix different rates in the future on these commodities interstate, those rates would then be made lawful intrastate by filings made by the carriers with the Georgia Commission and accepted by that Commission. If the State Commission should not accept those filings and neither the carriers nor the Interstate Commission accepted that action of the State Commission, then the remedies under Section 13 of the Act would be open alike to the Interstate Commission and to the carriers.

No unlawful application of the order has been made and none is threatened. The presumption is that no unlawful act will be done by either the Commission or the carriers. Until there has been some actual act of unlawfulness threatened the presumption is that both Commissions will stay within the law.

THE MINIMUM RATES PRESCRIBED ARE DEFINITE AND CERTAIN

The third point made by the appellants, as stated by the District Court, is "that the minimum sought to be prescribed is indefinite and uncertain" (R. 164).

The court below discussed this at page 169. The order (R. 115) directs the carriers "to establish, on or before March 3,

1930, and thereafter to maintain and apply to the intrastate transportation" of the commodities mentioned,

> "in carloads, between points in the State of Georgia, rates which shall not be lower, distance considered, than those contemporaneously applicable to the interstate transportation of the same commodities, in straight or mixed carloads, between points in the State of Georgia, and from points in other States in Southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities in straight or mixed carloads."

It must be borne in mind that the Commission fixed the basis of computing distances for the application of the scale of rates and that the shortest routes are to be used for rate-making purposes over which carload traffic can be moved without transfer of lading. The Commission states that it meant by this provision that the shortest single line route over which carload traffic could be moved, without transfer of lading, should be used in connection with the single line scale, and the shortest joint line route over which carload traffic could be moved, without transfer of lading, should be used in connection with joint line scale (R. 107). When there is only one line between origin and destination the ascertaining of the minimum intrastate rate requires no equation. When there are two or more lines between origin and destination of different rate-making qualities the ascertainment of the minimum intrastate rate over the less favored line requires the application of the Fourth Section Order coupled with the arbitrary allowed, if any, to the so-called weak line. This arbitrary may or may not have been taken in full or at all; but, if it had been taken either in full or in part this was reflected in the rate schedules of file and contemporaneously in effect in interstate commerce on the date of the order here involved.

The Georgia Commission cannot go below these minima rates. It may go above them.

This leaves the Interstate Commission's order not only capable of definite application, but the standard had been reduced to definiteness by the interstate schedules already of file with the Interstate Commission.

The court below found that (R. 169):

> "It is asserted, and we assume it to be true, that the vast majority of these point-to-point rates are mere applications of the scale, joint or single-line as the case may be, to the distances involved. So far, therefore, the actual rates are nothing but the maximum scale."

The Commission by its Fourth Section Order, which is set out in the Appendix hereto, has directed that all routes, not circuitous beyond a fixed per cent. (with certain other limitations therein fixed) might take the same rate as the lowest over any route, joint or single line, by which the carload freight might move without transfer of lading. There is nothing unusual about relief from the long and short haul rules either under Section Four of the Interstate Commerce Act or under the rules of the Georgia Commission, nor is there anything unusual about the method of ascertaining mileage. The Interstate Commission had approved that method in General Southeastern Class Rate Case, 100 I.C.C. 656; 109 I.C.C. 312; 113 I.C.C. 200; and in the General Cement Case, 132 I.C.C. 427.

The Commission states that:

> "The Fourth Section relief sought and granted was based on various considerations beside circuity. For instance, we have authorized joint line differentials in these proceedings in consideration of the extra costs incurred by respondents in interchanging traffic from one to the other. It would have been impossible for joint line carriers to

have met competition of single line routes and obtained these differentials without Fourth Section relief."

The Georgia Commission in its order of March 13, 1928, in the eighth paragraph thereof (R. 226), recognized the necessity for relief akin to Fourth Section relief. In that paragraph the Georgia Commission ordered:

> "That when, by the use of the schedule rates authorized in this Order, rates are established between competitive points by a carrier or carriers, whose lines form the lowest rate-making route, the carrier or carriers forming the longer distance, or higher rate-making route, are permitted to meet such competition, and to charge higher rates at intermediate points, but in no instance shall rates be charged higher than for the single or joint line scale of rates authorized herein, for the actual distance, via the route making the lowest rate to, from, or between such intermediate points."

The Georgia Commission thus, in effect, adopts both the method of ascertaining mileage fixed by the Commission and the method of ascertaining the rate to be applied between competitive points where the distance over the competing lines is not the same. This order of the Georgia Commission is so framed and its rate schedules are so stated as to permit joint line routes to meet the single line routes even when the carriers are not in the same class. It is only in these circumstances that the minimum rate comes into effect, and when it is necessary to ascertain the minimum rate, the bases for its ascertainment are set out by the Interstate Commission as plainly as they are set out by the Georgia Commission. Both scales are based on distance; the Interstate scale makes a higher rate for joint line than for single line hauls; the Georgia Commission's scale makes a higher rate for Georgia joint transportation between a Class "A" and a Class "B" road (R. 224, 226, column 3).

The Georgia Commission and certain interests complained to the Interstate Commission that (R. 108):

> "Carriers are maintaining numerous interstate rates on this traffic which are below the level of the 17517 scales."

The Commission replied that (R. 108-9):

> "An examination of this data discloses that with few exceptions the instances given are simply where different routes are, under the authorized fourth-section relief above referred to, meeting at competitive points the rates set by the rate-making route, and applying at intermediate points the authorized scale basis. It readily can be understood that if this relief were not accorded, the rate-making route would secure all the traffic between competitive points * * *. In applying within Georgia the scale prescribed by the Georgia Commission here in question, the carriers have the right, if they see fit, to meet at competitive points the rates maintained by the rate-making route. The argument here advanced that our findings and order require the maintenance over all routes between two given points of the rate established via the rate-making route is without merit."

We have seen that the Georgia Commission has not only the right to permit the carriers to meet at competitive points the rate maintained by the rate-making route, but that it has so provided for it as to its own schedules under the order of March 13, 1928.

The Commission proceeds as follows (R. 109):

> "The evidence in this case shows that with comparatively few exceptions, considering the extent of the territory covered, the carriers have checked in over the rate-making routes throughout the territory considered in the original proceedings interstate rates which are on the basis of the 17517 standard-line scales. Carriers explain that the instances where such rates are off the approved basis are the result of error which will be corrected."

The Court below took the same view of it and said (R. 170):

> "We see nothing to hinder the Georgia State Commission from causing the establishment of intrastate rates which will follow the same principles that were applied in fixing interstate rates where competition justifies departure from the maximum scale. Had the Commission prescribed a fixed intrastate scale, the State Commission, or the carriers, would have been bound to establish it forthwith. When instead a maximum and minimum are fixed, as is allowed by Section 13 (4), the fixing of the exact rates within these limits is to be done by the State Commission on its usual procedure. If the result in any instance is thought contrary to the order of the Interstate Commerce Commission, the latter may be applied to for further or clarifying order in the premises."

It would seem that this would, both as a matter of law and fact, put an end to the third contention made by the appellants in the court below.

FOURTH POINT STATED BY THE COURT BELOW

The fourth point stated by the court below, as urged by the appellants, is that as to rates above 200 miles the interstate rates are arbitrary and unreasonable, and themselves discriminate against the shorter hauls and other commerce.

In the second and final hearing the court stated that this point was abandoned (R. 169). It was, in any event, a matter of fact for determination by the Commission.

This contention was based on the difference in gradation of the rates to distances. Of course, this was to be controlled by the facts, and the finding of the Commission was conclusive.

THE FINDINGS OF THE COMMISSION, INDEPENDENT OF ADMISSIONS, FULLY MEET THE REQUIREMENTS OF SECTION 13 OF THE ACT TO REGULATE COMMERCE

We will summarize some of these findings:

The Commission found that there was keen competition not only between producers but between the commodities (R. 16, 95, 102). It found and stated the values of these commodities and showed that they were very low (R. 19). It found that there were numerous points of production of these commodities throughout the southern territory (R. 19). It stated in Appendix "A" to its original report (R. 63) the shipping or producing points of these commodities in Alabama, Georgia, South Carolina, Tennessee and North Carolina, each of which States border Georgia; in Alabama there were 43 producing points; in Georgia 38; in South Carolina 21; in Tennessee 28; and in North Carolina 13. It showed the quantity of movements of these commodities in southern territory over Class One roads (R. 19, 28, 41, 100, 101). It found the amount of the revenue arising to certain of the carriers from this traffic and the volume of the traffic (R. 28, 41, 100, 101). It showed the effect of this traffic to certain of these carriers if the Georgia rates had been in effect (R. 41, 100, 101). It showed the earnings per ton mile, which were low (R. 43). It found that there should be a uniform rate level upon the commodities over standard lines within the southern territory except the Florida peninsula (R. 51). It found that joint line arbitraries were proper (R. 52). It also found that in the price to the consumer the cost of transportation is a heavy factor (R. 53). It found that there was no transportation reason for maintenance of a different basis of rates intrastate on these commodities within Georgia than those which the Commission found to be reasonable for interstate transportation (R. 59, 91, 110).

It then found that the intrastate rates in Georgia to the extent that they are lower, distance considered, than the interstate rates contemporaneously applicable to transportation of the same commodities between points in the State of Georgia, etc., not exceeding the rates set forth in the appendix to the report, resulted and will result in undue preference, advantage, etc., and discrimination against interstate commerce. It found the amount of the difference between the two rates per ton. A difference of ten cents per ton is a substantial part of the cost price of the commodities which rank from 35 cents to $1.35 per ton (R. 19).

None of these findings is disputed. The findings show not only a difference in rate but an undue discrimination, and they show that this substantial disparity results in real discrimination; that the extent of the discrimination has been found by the Commission's order, and the Commission has made the means of removing that discrimination. The order thus complies with every requirement of the statutes and the decisions thereunder.

Note: Arkansas Commission vs. Chicago, etc., R. R. Co., 274 U.S. 597, 599.

STATEWIDE SCOPE OF THE INTERSTATE COMMISSION'S ORDER

The order is statewide and applies to all intrastate traffic in the commodities mentioned between points in Georgia. It is based upon undue preference and advantage of shippers and receivers of freight in intrastate commerce in the State of Georgia and undue prejudice to shippers and receivers of freight in interstate commerce in the State of Georgia and from points in other States in southern territory, except Florida, to points in Georgia, and in unjust discrimination against inter-

state commerce. The investigation made by the Commission covered the entire State of Georgia. It showed not only the 38 producing points in Georgia, but those in Alabama, South Carolina, Tennessee, and North Carolina. It then showed the effect of the rates prescribed by the Georgia Commission by its order of March 13, 1928, as compared with the Interstate rates fixed by the order of that Commission of January 21, 1927. This investigation was statewide. A highway map of the State of Georgia will be filed with this brief, showing the points of destination as to which comparisons of rates interstate and intrastate were shown in the evidence before the Commission in its last investigation leading up to its order of December 9, 1929. The Commission states (R. 96):

> "Exhibits were introduced by respondents showing the interstate rates from numerous representative shipping points to representative destinations in Georgia, which rates are on the basis of the 17517 scales; rates from representative Georgia origins to the same points, which are on the basis of the Georgia Commission scale; and the amounts by which the said Georgia rates differ from the 17517 basis."

Comparisons of the kind shown in the quotation just above set out were made to 350 points of destination in Georgia. We contend that these comparisons demonstrated that the discriminatory effect of the Georgia intrastate rates against interstate commerce and as to persons and places, existed and exists throughout the entire State of Georgia.

A glance at the map above mentioned will give visual proof of the statewide scope of the investigation. (The destinations on the above mentioned map are not taken from any one exhibit; they are taken from all the applicable exhibits—a Georgia highway map was used in making some of the exhibits before the Commission.)

We are filing with this brief another map which shows the location of the 38 points of origin of these commodities in the State of Georgia. Those points are encircled in red. It will be seen that they are widely scattered over the State and that in view of the keen competition between commodities and also between markets, and in order to remove the discrimination condemned by the statute it is necessary that the Interstate order be made statewide.

This investigation and the nature of the commodities would seem to fully meet the requirements of the Wisconsin Case, 257 U.S. 563, 580. In that case the court, referring to the Shreveport Case, 234 U.S. 342, and the Illinois Central Case, 245 U.S. 493, stated:

> "There, as here, the report of the Commission showed discrimination against persons and localities in border points and the orders were extended to include all rates or fares from all points in the State to border points."

The court then called attention to the fact that the order in the Wisconsin case was not so restricted, but included fares between all interior points, although neither may be near the border and the fares between them may not work a discrimination against interstate travelers at all.

In the case at bar the report of the Commission shows discrimination against persons and localities throughout the entire State of Georgia. Here there is competition between two systems of rates. The necessity for uniformity on these rates throughout the southern territory was found by the Commission. This need of uniformity is not as to a part of the southern territory, but as to all of that territory. The investigation, as we have shown, includes so many points in the State of Georgia so widely scattered that we may fairly say that it includes all of it. The use of the commodities in highway build-

ing, railroad ballast, concrete construction and other structural work, will require that they be transported to any, or all, or possibly every, destination in Georgia, not only in the building of highways but in the repairing of them and the placing of ballast and keeping the ballast in repair and the making of the structures referred to. Work of this kind may be carried on in the large cities or in the waste spaces of the State. To illustrate: Concrete highways, of course, pass through thinly populated sections; railroads pass over like places; and heavy constructions, such as dams, bridges, causeways, and culverts are frequently made in the most out of the way places where there is no population at all. Those constructions use these commodities.

The producing points for some or all of these commodities are constantly changing, additions are being made to them, there are innumerable deposits of sand, gravel and stone scattered not only over the State of Georgia, but over the neighboring States, and new points of origin are being frequently added and, of course, the points of destination are constantly changing. The result is that no rate system can be effective as to these commodities which is less than statewide. The intent of all parties was uniformity in the rate structure. This was in recognition of the facts here stated and of the further fact that the rate system put in by the Interstate Commission was already in effect in the neighboring states and that the producers in those states were in direct competition with producers in Georgia (R. 95), and further because it was urged upon the Commission that it should consider not only the effect that a failure to condemn the Georgia intrastate rates would have upon the revenue of the carriers but also other results which would likely follow such action, and that the final result would be that the general basis prescribed by the Interstate Commission, after an exhaustive investigation and much labor, would be effectively

whittled away and uniformity defeated by the separate actions of the other neighboring states (R. 105).

Besides the unlawful discrimination worked against localities, persons and traffic, there was ample evidence to show discrimination against general interstate commerce, as we will hereinafter point out.

The Georgia Commission's order of March 13, 1928, was statewide. It was confessedly made with the view of disagreeing with the Interstate rates which had been made by the Commission. It declared that the gradation of the scale prescribed by the Interstate Commission would work great injury and damages to shippers and carriers on Georgia intrastate traffic, "and for that reason we are prescribing a revised scale in order that all interests may be preserved" (R. 79).

The points which the Interstate Commission stated were those constituting the chief defense of the Georgia Commission, and which have been heretofore set out, show clearly that the Georgia Commission accepted the proposition that any order entered should be statewide (R. 104).

The points made in the District Court and before the Commission in defense of the Georgia Commission's order, and which we have heretofore set out, show no complaint against the Interstate Commission's order because it is statewide.

The Interstate Commission in this case made the basic or essential findings required to support the Commission's order.

DISCUSSION OF THE POINTS MADE BY THE APPELLANTS BEFORE THE INTERSTATE COMMISSION IN DEFENSE OF THE GEORGIA COMMISSION'S SCALE OF RATES

There were four of these points, the last of which was abandoned as we have pointed out. The first two are arguments as

to why there should not be joint line differentials. The third point is that "it is not now the policy of the Georgia Commission to authorize joint line differentials." As a matter of fact, three of the four points revolve around the propriety of joint line differentials in this traffic. The fourth point went to the proposition that the scale prescribed by the Georgia Commission is reasonable and is better gradated than are the Interstate Commission's rates. In no one of these points is there raised any question of power. These points, when taken in connection with the admissions of the need of uniformity of rates, are simply asserting that uniformity should be accomplished by the method contemplated by the Georgia Commission rather than that contemplated by the Interstate Commission. Uniformity was to be between interstate and intrastate rates on these commodities. It was admitted that this uniformity should exist throughout the entire southern territory. It would be impossible to give that subject over to the Georgia Commission, for it involved the dealing with things quite beyond the jurisdiction of that Commission, both as to interstate rates and as to the territory beyond the Georgia lines. This brings us back to the proposition that there was an admitted need of uniformity between the State and Interstate rates to avoid the discrimination prohibited by law; that the Interstate Commission thought that this uniformity should be brought about by one level of rates; the State Commission thought it should be brought about by another. It is the Interstate Commission which must prevail in this circumstance.

STATEWIDE SCOPE OF THE ORDER FROM A REVENUE STANDPOINT

We have pointed out the Interstate Commission's findings as to the quantity of these commodities moving. (See page 26 hereof and R. 28, 29, 101.) These findings show that the traf-

fic, both from the standpoint of tonnage and revenue, is of great importance to the various railroads involved.

In 1924 the tonnage constituted 18.1 per cent. of the Atlantic Coast Line Railroad Company's total tonnage. For the first ten months of 1925 that road handled 4,452,519 tons, which produced a revenue of $4,074,316.

The tonnage in these commodities handled by the southern carriers was exceeded only by that of the products of the forest and of bituminous coal (R. 17). The Commission found (R. 100) that during the four months period ended April 30, 1928, 1,289 cars of these commodities moved over the line of the Southern Railway between points in Georgia, and that that road participated in the joint line movement of 3,111 shipments between Georgia points.

The Georgia, Southern & Florida Railway originated and delivered 124 shipments and participated in the joint line movement of 583 shipments moving between Georgia points. During the same period the entire Southern Railway System originated and delivered 12,817 shipments and participated in the joint movement of 14,977 (R. 100).

It was computed that if the 17517 basis of rates had been applied to the carload traffic originating in Georgia on the Southern, including shipments received by that line from the Gainesville & Northwestern at Gainesville, Ga., during the four months period ended August 31, 1928, the road would have received $12,000 more revenue than was produced by the application of the Georgia scale. This is equivalent to $36,000 computed on an annual basis (R. 100).

As to the Seaboard Airline, the Commission found that in 1927 its tonnage in these commodities was 25.5 per cent, of its total tonnage for that year; that during the five months period

ended May 31, 1928, the Seaboard handled 14,892 tons of slag from Alabama producing points to points in Georgia; that those latter shipments were charged on the basis of the 17517 rates; and that the application of the Georgia scale to that tonnage would have produced $617 less revenue (R. 100).

The Commission found that during the six months period ended June 30, 1928, 23,096 tons of sand and gravel moved from Alabama producing points to Georgia destinations; that if the Georgia scale had been applied to that revenue, that tonnage would have produced 7.7 per cent. decrease, that is, $2,511; that during the months of May, June, July and August, 1928, a period immediately succeeding the date when the Georgia scale became effective, 50,687 tons of crushed stone, sand and gravel originated at producing points in Georgia on the Seaboard and moved to destinations in Georgia; that the charges collected were $7,307 less than they would have been on the basis of the 17517 scale, and that this was equivalent to $22,000 computed on an annual basis (R. 101).

The Commission found that the Georgia Railroad, Western Railway of Alabama, and the Atlanta & West Point handled very large tonnage, as has been hereinbefore set out, amounting to 17.03, 29.99 and 20.78 per cent. of the total tonnage of those roads, respectively, for the year 1927; that during the four months ended August 31, 1928, 100,515 tons of these commodities originated on the Georgia Railroad and moved to Georgia points; that the charges collected were $9,148 less than would have accrued on the basis of the 17517 scale, and that this was equivalent to approximately $27,000 computed on an annual basis (R. 101).

The Commission also found (R. 43) that the application of the Georgia scale shows that the ton mile earnings on this traffic are exceedingly low, and also found the percentage of the ton-

nage transported in these commodities to the total tonnage, and then the percentage of the revenue derived from this transportation to the total freight revenue. The disparity is very great (R. 28, 29).

The Commission thus made findings as to the quantity of the traffic, the value thereof, the rates thereon, the revenues derived therefrom, the rates per ton mile, the effect of transportation rates on markets, the locations of the producing points and the shipping points, the keenness of competition, the relation of the quantity of the traffic to total tonnage and of the revenue therefrom to total freight revenue and the transportation characteristics of the traffic; and it made many comparisons of rates intrastate with interstate, amply covering the State. It then made estimates of the effect on the revenue of some of the carriers in the operations of the two scales of rates. It found not only that a discrimination was worked by the Georgia scale of rates but that this existed to the extent that the Georgia rates are lower, distance considered, than the Interstate rates (the 17517 scale fixed by the Commission's order of January 21, 1927). These findings are to be taken in connection with the circumstances of the trial and the admission of the parties as to the need of uniformity of schedules; also in connection with the order of the Georgia Commission of March 13, 1928, and the purposes thereof as expressed by its terms.

We insist that the record shows a submission to the Commission on the basis of existing unlawful discrimination admitted by all parties; the Interstate Commission claiming that the discrimination was against interstate rates, the Georgia Commission claiming the discrimination was against intrastate business; and all admitting the need of uniformity of rates not only in Georgia but throughout the entire territory; and that the facts found are sufficient in and of themselves, independent of these admissions, to justify the order of the Commission; and that

when the facts thus found are taken in connection with those admissions and the issue submitted and the method of trial and the points raised in defense of the Georgia Commission's position, it makes it doubly sure that the Interstate Commission's order is lawful, amply sustained by findings, and that it should be sustained in its statewide scope because of the unlawful discrimination worked by the Georgia Commission's order of March 13, 1928, against persons, places, etc., and as well against Interstate Commerce.

We also claim that, apart from any admissions as to uniformity of conditions, the evidence before the Commission and the findings of the Commission, intermediate as well as final, justified the Interstate Commission in finding the discrimination and in removing it by the order which was entered.

We respectfully submit that the decree of the Court below should be affirmed.

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APPENDIX NO. 1

FOURTH SECTION ORDER

"*It is ordered*, That carriers defendant in Docket 17517 and cases consolidated therewith, *Rates on Chert, Clay, Sand and Gravel*, 122 I.C.C. 133, and other carriers parties to the above numbered applications which applications are hereby made a part hereof, be and they are hereby authorized to establish and maintain on the following commodities in carloads, viz: sand, gravel, crushed stone, slag, rubble stone, broken stone and chert over all lines or routes from any point of origin to any point of destination within the territory included within the scope of the proceedings in Docket 17517 and cases consolidated therewith, the lowest rates applicable on sand and gravel over any route between the same points constructed on the bases prescribed in the report in the said proceedings, which report is hereby referred to and made a part hereof, and to maintain higher rates from, to and between intermediate points: *Provided* that the rates of any of said commodities in carloads from, to and between the said intermediate points shall not exceed the contemporaneous rates on sand and gravel constructed on the bases prescribed in the said report and shall in no case exceed the lowest available combination; *and provided further*, that except as authorized in the next succeeding paragraph hereof the relief herein granted shall not apply (1) where the short line or route from any point of origin to any point of destination is 150 miles or less in length and the longer line or route between the same points is more than 70 cents circuitous; (2) where the short line or route exceeds 150 miles in length and the longer line or route is more than 50 per cent. circuitous, except that where the short line or route exceeds 150 miles and the longer line or route does not exceed 255 miles, the relief herein will apply to such longer line or route even though the said longer line or route is more than 50 per cent. circuitous.

It is further ordered, That in the event that carriers applicants herein desire to publish general rules showing rates and maximum distances for routing in accordance with the method and subject to the limitations authorized in *Brick and Clay Products in the South*, 113 I.C.C. 380, in lieu of the publication of specific routing between points of origin and destination, said carriers be, and they are hereby, authorized to observe the degrees of circuity which would result from the establishment of routes in the manner and upon the basis set forth in *Brick and Clay Products in the South*, supra."

APPENDIX NO. 2

SECTION 13 OF THE INTERSTATE COMMERCE ACT:

(1) That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters

complained of in such manner and by such means as it shall deem proper.

(2) Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this

Act with respect to the relationship between rate structures and practices of carriers subject to the jurisdiction of such State bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such State regulating bodies on any matters wherein the Commission is empowered to act and where the rate-making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facilities of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

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No. 555

In the Supreme Court of the United States

OCTOBER TERM, 1930

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL., ETC., APPELLANTS

v.

THE UNITED STATES OF AMERICA AND THE INTERSTATE COMMERCE COMMISSION ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. Perry, Albert J. Woodruff, et al., etc., appellants

v.

THE UNITED STATES OF AMERICA AND THE INTERstate Commerce Commission et al.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

MEMORANDUM FOR THE UNITED STATES

The United States submits this case for decision upon the brief filed in behalf of the Interstate Commerce Commission.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

APRIL, 1931.

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U. S. GOVERNMENT PRINTING OFFICE: 1931

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CHARLES ELMORE CROPLEY
CLERK

IN THE

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GEORGIA PUBLIC SERVICE COMMISSION, JAMES A. PERRY, ALBERT J. WOODRUFF, ET AL,
Appellants

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSSION, ET AL,
Appellees

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BRIEF ON BEHALF OF ATLANTIC COAST LINE RAILROAD COMPANY, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ATLANTA & WEST POINT RAILROAD COMPANY, SEABOARD AIR LINE RAILWAY COMPANY, THE LESSEES OF THE GEORGIA RAILROAD, THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, CENTRAL OF GEORGIA RAILWAY COMPANY, ATLANTA, BIRMINGHAM & COAST RAILROAD COMPANY, AND SOUTHERN RAILWAY COMPANY, REPLYING TO BRIEF FILED BY THE GEORGIA PUBLIC SERVICE COMMISSION AND ALSO TO BRIEF FILED BY THE STATE HIGHWAY BOARD, AND OTHERS

FRANK W. GWATHMEY,
W. N. MCGEHEE,
ROBERT C. ALSTON,
Attorneys for the Carriers Mentioned.

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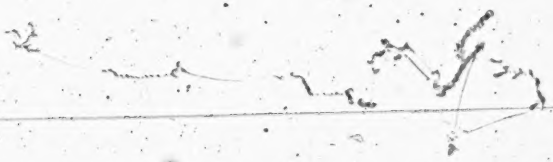

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PLEADINGS OF THE GEORGIA PUBLIC SERVICE COMMISSION BEFORE THE INTERSTATE COMMERCE COMMISSION

The Georgia Public Service Commission filed no pleadings before the Interstate Commission, except a petition for rehearing after the order of the Interstate Commission entered on December 9, 1929 (R. 118-133). It apparently relied upon its order of March 13, 1928, as a sufficient statement of its case to the Interstate Commission. At page 10 of the brief for the Georgia Commission it is stated that the Interstate Commission's report of January 21, 1927, did not prescribe rates generally throughout the Southeastern States. This order did prescribe rates interstate between points in the State of Georgia, and between points in the State of Georgia and points in other States in Southern territory, except Florida (R. 74). The Interstate Commission's second report showed that the rates which it prescribed in its first order were in effect interstate in all of the Southern territory except in Mississippi and the western parts of Tennessee and Kentucky, and were in effect intrastate in North Carolina and Alabama, and also in Tennessee and Kentucky except the western parts thereof (R. 91), and in the peninsula of Florida.

REPLY TO THE STATEMENT OF THE ESSENTIAL FINDINGS BY THE COMMISSION (Georgia Commission's Brief, p. 10)

The Interstate Commission did prescribe the maximum rates for interstate transportation in its order of January 21, 1927, and it did not prescribe minimum rates, but made the following statement in its report (R. 32):

> "While we shall not prescribe minimum rates, we shall prescribe a scale which takes fully into consideration the very low values of these commodities and all characteris-

tics, transportation or otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart. Departures could only have the result, ultimately, of forcing an unwarranted reduction in the general rate level on these commodities which would be burdensome to other traffic."

Of course, the Interstate Commission has jurisdiction over rates filed with it for interstate carriage, and those rates cannot be changed except after compliance with the requirements of the Interstate Commerce Act, Secs. 6 (3) and 15 (7), with the right in the Commission to reject changes which it may deem improper.

The statements in paragraphs (b), (c), (d), and (e), on page 11 of the Georgia Commission's brief, are correct. Those statements recognize that the Interstate Commission fixed a differential between single line hauls and joint line hauls and also provided for the application of the Fourth Section Order, which order is set out in Appendix No. 1 to our original brief, and certain arbitraries are allowed to so-called weak lines.

The statement in paragraph (f) of the Georgia Commission's brief (page 11) is correct. That statement means that the Interstate Commission found that the Georgia Commission's order of February 25, 1925, did not bring about a situation unjustly discriminatory against interstate commerce *on February* 25, 1925; but the Interstate Commission in its order of January 21, 1927, changed those rates. The Georgia rates as prescribed by its order of February 25, 1925, did discriminate against the interstate commerce rates thus fixed by the Interstate Commission. The Interstate Commission, as we have pointed out (R. 59), relied upon the Georgia Commission to make the changes in its rate structure which would relieve the discrimination brought about by the Interstate Commission's order of January 21, 1927. The Georgia Commission refused to do that, and out

of that grew the proceeding which resulted in the Commission's order of December 9, 1929 (R. 88).

Paragraph (g) states that the Commission in its order of December 9, 1929, found in very general terms that "the state rates in Georgia were in violation of Sec. 13," etc. This statement overlooks the finding of the Commission as to transportation, interstate and intrastate, to many State destinations, which points the Commission stated to be representative; also the evidence and findings covering points of origin within and without the State of Georgia and the many points of destination within the State; also the finding of agreement of the parties as to uniformity of conditions; also the findings as to values of the commodities, the keenness of competition, and the effect of slight differences in the transportation charges on the markets; also the findings as to the value of those commodities, their percentage of the total tonnage of the carriers and their percentage of the gross freight revenue; also the gross revenue per ton-mile on these commodities and that these were very low.

The statements in paragraphs (h) and (i) are simply references to the orders of December 9, 1929, claiming that the Commission specified no element except distance in the finding. This latter statement is incorrect, for the Commission did consider values, competition between commodities, competition between markets, competition between carriers, and the making of the Fourth Section Order and the adjustment incident thereto, together with the provision for the so-called weak lines, the nature of the commodities and other things. Paragraph (i) makes the point that the minimum basis is vague, indefinite and uncertain.

We submit that this statement of the essential findings of the Commission shows that the final points relied upon for attributing error to the Interstate Commission's order are:

(a) That the Commission prescribed joint line differentials;

(b) And a Fourth Section Order, set out in the Appendix to our original brief;

(c) That allowances were made to certain named lines, which are called short or weak lines;

(d) That no element, except distance, was considered in making the findings;

(e) That the basis for ascertaining the minimum basis of rates is indefinite and uncertain.

Each one of these points is controlled by the facts found by the Commission. In our original brief we have undertaken to show that no one of them is well taken.

We submit that this analysis, made on behalf of the Georgia Commission, of the findings of the Interstate Commission reflects the fact that this case was submitted to the Commission on the basis of competition between the Interstate Commission's method of removing discrimination and the Georgia Commission's method of removing it. The Georgia Commission did not deny the existence of discrimination, but claimed that the discrimination was brought about by the Interstate Commission's order rather than by its order. This fits into the theory of the order of the Georgia Commission of March 13, 1928 (R. 79).

REPLY TO ALLEGED "DEFICIENCIES IN RECORD BEFORE COMMISSION" (Georgia Commission's Brief, p. 13)

(a) (b) The first claim of deficiency is that the second hearing was limited to questions of undue prejudice and unjust preference and did not involve the reasonableness of the rates. We have replied to this in our original brief at page 41. This claim is based upon the fact that the original case was reopened

after the finding of January 21, 1927, for the sole purpose of ascertaining whether or not the Georgia rates of March 13, 1928, discriminated against the rates found reasonable by the Interstate Commission in its order of January 21, 1927. The Commission found against this point and so did the lower court. The rates had been ascertained by the Interstate Commission to be reasonable after a long investigation and a full hearing. No specific facts were pleaded or alleged to show any change since such finding.

Furthermore, at Record 615-616, copied at pages 30-31 of Georgia Highway Board's brief, it appears that the objections to the Commission's procedure were too general and indefinite, and do not in fact go to the point now raised. There were two objections. The first was that the issues now presented to the Commission as defined by the order, and as defined by the complaint, and as defined by the opening statement of the examiner, are not the same issues that were presented at that time, in those proceedings. The second was "that the testimony then given throws no real light on the conditions now obtaining and which will obtain for the future, * * * that conditions have materially changed since February, 1926 * * *, and much of the matter then in evidence was immaterial to any issue now before the Commission * * *."

Manifestly the first objection is of no force. The issue before the Commission in the second hearing was based upon the issues and finding in the first. In no circumstances could the record in the first hearing be irrelevant to the second hearing.

The second objection, besides being an argumentative statement, is incorrect. The evidence in the first hearing, of course, threw "real light" on the second.

> "A general objection is insufficient if the offered evidence is admissible for any purpose in the case; or, as

sometimes stated, such an objection is insufficient unless the evidence is wholly inadmissible for any purpose or in any aspect of the case."

9 Encyc. of Evidence, 62.

(c) This alleged deficiency is that there was no evidence offered or received to carry the burden of proof imposed by Section 15 (7) of the Act. The answer to this is that there was an immense amount of evidence offered on the subject and received by the Commission, considered, and the findings were made establishing rates after a full hearing. The Commission had prescribed as reasonable the interstate rates then in use in Georgia and those rates were then in effect. They thereby became a measure of reasonableness for the intrastate rates, it being conceded and found that the conditions of transportation were uniform. Furthermore there was much evidence on the comparison of the two systems of rates and findings of unlawful discrimination against the interstate rates. Discrimination to the extent of unlawfulness is unreasonable. Besides Section 15 (7) of the Act does not apply to situations of the kind here presented. We presume that the Georgia Commission intends that this point (c) shall be the same as points (a) and (b) under this subdivision of its brief. At any rate, neither the facts nor the findings sustain the point.

(d) This point is based upon the allegation on behalf of the Georgia Commission that there was no evidence in the record to show that transportation over joint line routes is more difficult or expensive than over single line routes for corresponding distances.

We think this point is made by the Georgia Commission in inadvertence.

The witness Doss testified (R. 346):

"The expense of handling this traffic over two or more lines is greater than the expense of a one-line haul. The Georgia Commission's proposed single line scale is, we think, too low, when the entire revenue accrues to the line performing the single line scale. But when we get beyond 100 miles, they allow no addition when the service has to be performed by two or more lines, although the expense is greater than for the single line service."

The latter part of this statement refers to the Georgia Commission's order of February 25, 1925 (R. 200), which did allow joint line differentials up to one hundred miles.

Mr. Doss then offered his Exhibit 52, showing in cents per ton for representative distances the amounts by which the joint line scale exceeded the single line scale on Classes 6 and D and on various commodities under the carriers' proposed scales and under the mileage scales which have since 1921 been prescribed by the Georgia Public Service Commission (R. 347). He also introduced a number of extracts from cases in the Interstate Commerce Commission allowing joint line differentials. These excerpts include those from Pennsylvania Sand and Gravel Producers Association vs. B. & O. Railroad Co., 104 I.C.C. 717, which was decided on December 22, 1925, fixing differentials on sand and gravel from shipping points in Western Pennsylvania to various interstate destinations; American Sand & Gravel Co. vs. C. & N. W. Ry. Co., 88 I.C.C. 1; Duquesne Slag Products Co. vs. Pennsylvania R. R. Co., 92 I.C.C. 554; Empire Cotton Oil Co. vs. Maxton, Alma & Southbound R. R. Co., 69 I.C.C. 729, 732; this concerned cotton seed; Continental Sugar Co. vs. New York Central Railroad, 91 I.C.C. 683, which concerned sugar beets; Southern Veneer Ass'n vs. A. C. L. R. R., 62 I.C.C. 673, which concerned certain kinds of logs.

In Southern Class Rate Investigation, 113 I.C.C. 200, at 205, the Commission recognized the propriety of making compensation for the added expense of joint line hauls over single line hauls.

In the light of this record it would seem that the argument should not be made that there was no evidence to support the differentials between the single lines and the joint lines.

(e) This alleged deficiency is based upon the theory that the record contains no evidence of transportation conditions, respecting the intrastate transportation of these materials in Georgia. It is difficult to understand this point in the light of the great volume of evidence that there is on the subject. There were a great many exhibits of comparisons of rates throughout the territory; evidence of adoption of the rates intrastate in North Carolina, Alabama, Kentucky and Tennessee (except the Mississippi Valley part of the last two states) (R. 629). The Georgia Commission admitted the uniformity of conditions in its brief before the Commission (R. 110); its order of March 13, 1928, is based on the existence of uniform conditions (R. 76, 78-79). At pages 626-627 of the record the witness Doss testified as to uniformity of conditions in the territory and the need for uniform rates (R. 506, 627). The witness Burke likewise gave evidence to the same effect (R. 682). The Commission found this uniform condition in its first report and adhered to it in the second (R. 78). This uniformity of condition in the territory was agreed upon by the parties to this cause, as we have pointed out in our original brief. (See R. 256 and 259—Question 6 and the answer).

CONSIDERATION OF SUMMARY OF ARGUMENT OF GEORGIA COMMISSION (Brief, pp. 19-24)

At page 20 the brief states:

> "In the present case the whole history of the action and attitude of the Georgia Commission has been in the direction of building up the revenues of these interstate carriers on these materials, *advancing cut-throat competitive rates* which various carriers have maintained, one competing

against the other, and to put the rate schedules on a fairly harmonious general basis. The order of the Georgia Commission fixing the maximum rates on these materials within Georgia, entered March 13, 1928, and against which the Commission's order is directed, was in complete harmony in principle with repeated decisions of the Interstate Commerce Commission, in the treatment of rates for so-called joint line hauls as distinguished from single line movements." (Italics added.)

We contend that this statement shows that the Georgia Commission was submitting its rate basis as one not only for statewide use but as one for the building up of the revenues of the interstate carriers, and that its statewide order was necessary because of the "cut-throat competitive rates which various carriers had maintained, one competing against another," and that it was the intent of the Georgia Commission to put the rate schedules on a "fairly harmonious basis." The rate schedules referred to are construed to be the interstate schedules and the intrastate schedules.

We contend that in the latter part of the quotation the Georgia Commission contends that its last order of March 13, 1928, is better than the Interstate Commission's order because the latter applied joint line differentials. Each of these statements emphasizes the need of uniformity of rates and shows that the carriers were engaged in cut-throat competition. Of course, that means that the rates which the carriers were making were so low that they required raising because of the revenue of the carriers. "Cut-throat" competition can mean only that kind of competition which was forcing the carriage of these commodities at less than compensatory rates.

The statement above quoted from the Georgia Commission's brief should be taken in connection with the findings of the Interstate Commission, pointed out at pages 26-30 and 60-63 of

our original brief, as to the quantity of these commodities carried, the low revenue therefrom, the large percentage of the tonnage of the carriers made by these commodities, and the low corresponding percentage of revenue of the carriers derived from this carriage, and the low ton mileage thereon, and when thus considered in connection with these findings it shows that the Georgia Commission itself recognized that there was a need of change in the rates on these commodities intrastate in Georgia and of harmony therewith with the Interstate rates, not only because of the discrimination against persons, places, etc., but also because of the effect on the revenue of the carriers, which was being worked by the rate situation which the two Commissions were undertaking to cure and which brought about a competition called by the Georgia Commission "cut-throat."

We contend that the Georgia Commission's brief and its order of March 13, 1928, recognized the need of uniformity; that there was improper competition between the railroads as to these commodities; that the Georgia Commission claimed, as did the Interstate Commission, that this should be removed. The Georgia Commission's claim is that the Interstate Commission's basis is wrong because of the differentials allowed by the latter Commission for joint hauls and because of the Fourth Section Order. The Georgia Commission had itself allowed joint line differentials on the same commodities up to 100 miles in its order of February 25, 1925. It now authorizes these differentials on a number of commodities, to-wit:

Asphalt	Brick
Creosote	Sewer pipe
Road oil	Drain tile
Pitch and tar	Wall coping
Canned goods	Peanuts
Cotton ties	Wood-waste, resinous
Potatoes	Tile-roofing, ridge or border
Beans—velvet, soy, soja or soya	Limestone—white stone or marble
Cottonseed	

See 56th Report of Georgia Public Service Commission, pages 186-212.

Relief of the kind called Fourth Section Relief is provided by the Georgia Commission in its order of March 13, 1928. See Sections 5 and 8 (R. 81-82).

THE GEORGIA COMMISSION'S METHOD OF ASCERTAINING MILEAGE WAS VERY MUCH THE SAME AS THAT PRESCRIBED BY THE INTERSTATE COMMISSION

The witness Price stated (R. 765) that the tariffs contain a rule defining how the Georgia scale will be applied. That is, what mileage may govern. This is Agent Glenn's Tariff I.C.C. A-529, Freight Tariff No. 33. The rule applicable is Note 2, page 16-A, which is as follows:

> "Where there are two or more available routes between any two points, the lowest rates applicable via any route between said points will be applicable via all available routes between said points, except as provided below:
>
> "Exceptions: Rates applicable between junction points and local stations on any railroad serving such junction points, and between local stations on any railroad will apply only via such railroad direct, whether such rates are made by use of mileage scales for single line or joint haul application, except:"

The exceptions referred to were certain specific cases.

The difference between the Georgia Commission's rule and the Interstate Commission's rule appears to be that the Interstate Commission's rule makes a limit on circuity while the Georgia Commission's rule makes no such limitation. There would seem to be no debate but that the rule of the Interstate Commission, which limits circuity, has more to commend it than the rule of the Georgia Commission, which has no such limitation.

Under the Fourth Section of the Act to Regulate Commerce the Interstate Commission is prohibited from permitting the establishment of any charge to or from the more distant points that is not reasonably compensatory for the service performed.

So, in the last analysis, the Georgia Commission complains of only those things which it has allowed as to these identical commodities and which it is now allowing as to many commodities, and as to the Fourth Section Relief it complains of that which it is allowing in its own order.

Can there be any doubt but that when there is a conflict between the two Commissions over these subjects the superior and controlling power is in the Interstate Commission?

DISCUSSION OF THE GEORGIA COMMISSION'S ARGUMENT THAT "THE COMMISSION'S REPORTS AND ORDERS ARE VOID BECAUSE THEY ARE AN UNLAWFUL INVASION OF THE SOVEREIGN RIGHTS OF THE STATE OF GEORGIA IN REGULATION OF INTRASTATE COMMERCE" (25-36).

Much of this argument is very general, as for instance "the Commission's order definitely and intentionally requires reductions in numerous State rates in Georgia and changes inter-relationship of many purely State rates."

There is no specification as to the rates referred to. It should be borne in mind that the Georgia Commission had no power to make an actual rate. That Commission's General Rule No. 3 (56 Report Georgia Public Service Commission, page 41) contains the following:

> "All of the rates prescribed by the Commission are maximum rates, which shall not be exceeded by any company.
>
> "Any company may charge less than the prescribed maximum rate, provided that, if a less rate be charged to

one person, such company shall, for a like service, charge the same lessened rate to all persons, except as may be hereafter provided; and if any company shall reduce any of its rates to or from one agency or station, it shall, except in cases where otherwise specially provided by the Commission, make a reduction of the same percentage to and from all other stations on its line, to the end that no unjust discrimination may be made in favor of nor against any person, persons, or locality."

Mr. E. M. Price, Rate Expert of the Georgia Public Service Commission, testified as follows (R. 755):

> "Under the Georgia law, all rates prescribed by the Georgia Public Service Commission are maximum rates, and under the rules of the Georgia Commission may be reduced voluntarily by the carriers, provided, of course, in making such reductions discriminations are not created."

Thus a rate ordered by the Georgia Public Service Commission, even though it may be included in tariffs filed with that Commission, may be reduced without authority from the Commission on the only conditions quoted.

The Interstate Commission's order complained of in this case (R. 115) does not undertake to change any rates on these commodities intrastate in Georgia except those which are lower, distance considered, than the interstate rates contemporaneously applicable.

The Interstate order, therefore, does not undertake to change rates which are higher than the interstate rates nor which are on parity with the Interstate Commission's order. We have seen the Georgia Commission can make no minimum rate. It is difficult to understand how it can be claimed, in the light of these undisputed facts, that the Interstate Commission's order reduced rates which were higher than the Interstate schedules or included rates which were on parity therewith.

Under the Georgia Commission's plan the carriers had the right to reduce their rates and in fact to file any rate which they pleased, provided it didn't exceed the Georgia Commission's maximum and did not work discrimination. So that if there have been any changes of the kind complained of in this Section of the Georgia Commission's brief, the changes have been made in pursuance of the latitude allowed by the Georgia statutes, which the carriers had the right to do and there is no complaint from the carriers. The Georgia Commission still has jurisdiction over those rates to the extent that it does not make them lower than the Interstate Commission's rates. It is likewise true of rates which are on parity. However, if there be any error as to this contention on our part, the Interstate Commission, in reply to the contention that there are many instances where the Georgia scale results in the same rates as would the 17517 scale, pointed out as follows (R. 110):

> "That situation only arises where the single-line rates for certain distances are the same under both scales. As stated by the United States Supreme Court in Wisconsin R. R. Comm. vs. C. B. & Q. R. R. Co., 257 U. S. 563-579:
>
> 'Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute.'"

In dealing with the general subject the lower court in its first opinion said (R. 167):

> "Nor do we think an exceptional situation such as is suggested would render uncertain and invalid the entire order. It should rather be amended by a supplemental order covering the particular overlooked instances." (Citing the Wisconsin case.)

DISCUSSION OF CHARTS IN APPENDIX TO GEORGIA COMMISSION'S BRIEF

In the section of the Georgia Commission's brief, beginning at page 27, references are made to rates between certain specific points of origin and destination. Seven charts are attached in Appendix III, pages XVI-XXII. We will discuss those charts as they appear in the Appendix, beginning with page XVI.

CHART A

This illustration involves the transportation of sand and gravel from Montgomery, Alabama, to Geneva, Georgia, a distance of 125 miles, as compared with intrastate transportation from Sparta, Georgia, to Geneva, Georgia. The interstate transportation is over a single line—the Central of Georgia—and the rate is $1.10, the distance 125 miles. The transportation from Sparta to Geneva, the same distance, moves over two lines—the Georgia Railroad and the Central of Georgia—and the rate is $1.25. The difference in the rate depends upon the fact that there is a differential allowed by the Interstate Commission for joint line transportation over single line transportation and no such differential is allowed by the Georgia Commission in its order of March 13, 1928.

The Interstate Commission said (R. 106):

> "It is apparent that certain interstate shippers, due to their location, are now able to ship to certain destinations over single-line routes and by reason of that fact have a rate advantage over other interstate shippers who are compelled to ship over two or more lines to the same point. Several of such instances appear of record. However, no interstate shippers are complaining of that situation. Such advantages are not undue."

There is no suggestion that any sand or gravel would move from either Montgomery or Sparta to Geneva. There are near-

er-by points of production such as Reynolds, Junction City and Columbus, which are intermediate; Columbus being intermediate between Montgomery and Geneva, and Reynolds and Junction City intermediate between Sparta and Geneva. The rates from those points would, of course, be less than the rates from either Montgomery or Sparta.

The Commission stated (R. 108):

> "We had authorized joint-line differentials in these proceedings in consideration of the extra cost incurred by respondents in interchanging traffic from one to the other."

CHART B

This compares the rates from Graysville, Georgia, to Hiram, Georgia, with the rates on the same commodities from Chattanooga, Tennessee, to Hiram. There are three routes from Chattanooga to Hiram. One of them is the single line route over the Southern Railway; the distance is 125 miles; the rate $1.10. The other two are joint line; one of these joint lines being 132 miles and the other 135 miles; the joint line scale is $1.35. If the joint lines charge $1.35 while the single lines charge $1.10, there would be no movement over the joint line routes. The Commission, by its Fourth Section Order, has permitted the joint line route to meet the rate of the single line route and, therefore, the rate is $1.10 from Chattanooga to Rockmart over each of the three lines. Certainly there is nothing unusual or unlawful in that. Graysville is on the N. C. & St. L. road south of Chattanooga and is, therefore, intermediate to Chattanooga and Hiram. Traffic moving from Graysville to Hiram would move on the N. C. & St. L. road to Dalton, a junction with the Southern road, and then proceed to Hiram or to Cartersville, a junction with the Seaboard Air Line, and thence to Hiram. The distance from Graysville to Hiram is 118 miles and the joint line rate applicable to 118 miles results in $1.25, and that is the

rate from Graysville to Hiram. This results, as did Chart A, from the application of the joint line differentials. It is asserted on behalf of the Georgia Commission that the maximum Georgia intrastate rate from Graysville to Hiram is $1.10. This would be the rate if it were based upon the contention of the Georgia Commission that the reduction of the interstate rate from Chattanooga to Hiram, to meet the rate-making route, prevents the Georgia carriers from charging intrastate rates, over the lines forming the joint route, greater than $1.10—the rate from Chattanooga to Hiram. This is thought to have been prohibited by the decision of this court in Louisville & Nashville Railroad vs. Eubanks, 184 U. S. 27. If the $1.10 rate is the normal Georgia Commission scale rate for that distance, then the difference is due to the fact that one system uses the joint line differential and the other does not.

CHART C

The rates involved in this chart are from Birmingham, Alabama, to Atlanta, Georgia. The Seaboard Air Line has a single line from Birmingham to Atlanta, a distance of 166 miles. The rate is $1.30. The Central of Georgia from Birmingham to Opelika and the Western of Alabama and Atlanta & West Point Railroads from Opelika through West Point to Atlanta, make a joint competing line. The joint line route is 232 miles. The joint line route is allowed to make the same rate as the single line route, and the intermediate place—West Point, Georgia—takes $1.35 rate against $1.30 for the longer haul. There would appear to be nothing illegal or indefinite in either of the two phases illustrated by this chart.

CHART D

This concerns rates on the same commodities from Birmingham, Alabama, to LaGrange, Georgia. The rate-making route is the

Atlanta, Birmingham & Coast as the single line and over that line the rate is $1.30. The distance is 166 miles. There is another route between those points via the Central of Georgia from Birmingham to Opelika and thence via the Western of Alabama and Atlanta & West Point. The short distance from Birmingham to LaGrange by the joint line is 161 miles. If the joint line were the rate-making route, the rate would be $1.40, but under the Fourth Section Order, No. 9516, attached to our original brief, the rate of $1.30 over the single line route may be used by the joint line route. It would seem that there would be no difficulty about that and that there would be nothing illegal or unusual, or indefinite in reference to it. It is noted at the bottom of page XIX of this chart that the rate from Birmingham via Opelika to West Point, which is intermediate to Birmingham and LaGrange, is $1.35, while the rate to LaGrange is $1.30. This comes about, of course, through the operation of the Fourth Section Order. There is nothing uncertain, indefinite or wrong about it.

CHART E

This involves the transportation of these commodities from Ellenton, S. C., to Helena, Georgia. The shortest line between these two points is via the C. & W. C., Ellenton to Augusta, Central of Georgia from Augusta to Millen, Georgia & Florida from Millen to Vidalia, and the Seaboard from Vidalia to Helena, making 163 miles at the rate of $1.40. The Commission's maximum scale for this distance is $1.65. There is another route via the C. & W. C. from Ellenton to Fairfax, S. C., and via the Seaboard from Fairfax through Savannah and Vidalia to Helena. The distance is 220 miles. The Commission's maximum rate is $1.50. These carriers are charging $1.40. The first mentioned joint line route is the route of short distance and is, therefore, the rate-making route. The Georgia & Florida,

which is rated as a weak line, might have added an arbitrary, but it did not do so. The rates have been filed; they are lawful and definite; and are satisfactory to the carriers.

CHART F

This involves transportation from Columbus, Georgia, to Helena, Georgia. The single line route is the Seaboard Air Line, 153 miles. The Georgia Commission's order prescribes a maximum of $1.20. The maximum fixed by the Interstate scale is $1.30. There is a joint line route intrastate from Columbus via the Central of Georgia to Macon and via the Southern from Macon to Helena. That route is 176 miles and the Commission's scale for that distance is $1.45, but the joint line scale is, of course, controlled by the lower single line scale, and on the joint line scale the rates to intermediate points are not affected by the competition, and this is the normal result of application of the Fourth Section Order—a condition which is recognized as lawful and proper by Section 8 of the Georgia Commission's order of March 13, 1928 (R. 226).

CHART G

This involves transportation of these commodities from Columbus, Georgia, to Fitzgerald, Georgia. The single line route is the Seaboard Air Line and is 150 miles. The Georgia Commission's maximum rate for that distance is $1.20 and was not charged under the Interstate Commission's order. There is a competing joint line route via the Central of Georgia and the Atlanta, Birmingham & Coast. The scale for the joint line distance is $1.35, but the single line scale controls. Of course, that is again the normal effect of the Fourth Section Order, which is recognized by the Georgia Commission to be lawful and right as above pointed out.

SUMMARIZING THE SEVEN CHARTS:

We find that *Chart A* is a simple application of the joint line differentials.

Chart B is an illustration of the universal fact that intermediate points are not allowed the benefit of Fourth Section orders; that is, the rate from Chattanooga to Hiram is controlled by the single line route, and the joint line routes are allowed to meet that. Graysville is on one of the single line routes and is intermediate to those points of origin and destination and is not allowed to meet it. It is possible that this difference is due to the fact that one system of rates allows joint line differentials and the other does not. In this latter event the sameness of the Georgia Commission's rate and the Chattanooga rate is a coincidence.

Charts C and D are simple illustrations of the joint line route being allowed to meet the rate of the shorter single line route intermediate points or not. They are, therefore, the same thing as Chart B except that Chart B is a little complicated by the circumstances mentioned.

Chart E illustrates the effect of the order when there are two joint line competing routes, in one of which routes a so-called weak line is a party and does not take the arbitrary permitted to it. It has the right to do this when its rates are filed. The reason for its action does not appear. A probable reason is that competition from some other point of origin is involved.

Charts F and G are illustrations of a joint line route meeting the competition of a single line route. There is no difference in rate-making principles between Charts B, C, D, F, and G, and the only difference in Chart E is the use of the weak line, which has been discussed.

These seven charts illustrate three things:

First: The difference between the application of a joint line and a single line rate.

Second: The application of the Fourth Section Order in which less favored routes between competitive points are permitted to meet the competition of the more favored routes within certain limitations, and that the intermediate station does not share in the lower rate.

Third: The meeting of competition between two routes, both of which are joint line, and in one of which routes there is a weak line which does not take its arbitrary.

These charts show that this situation works out to simplicity and exactness, and instead of demonstrating that the Interstate order is faulty, they show that the order is lawful, definite, clear and lends itself to exact statement on principles of rate-making, long established and often applied.

They further show that the bases of the attack on this order of the Interstate Commission are those things which lie especially within the domain of the Commission's jurisdiction.

We are assured by the Record (106) that "after mature consideration," the Commission reached the conclusion that "on this low grade traffic joint line arbitraries should be prescribed."

We have seen that the principles applied by the Interstate Commission are those which are recognized and applied by the Georgia Commission in those circumstances wherein it deems it proper so to do.

DISCUSSION OF SECTION II OF GEORGIA COMMISSION'S BRIEF (pages 37-48)

Appellant asserts that the Commission's reports subordinate the question of rates charged for actual transportation to the

question of adherence to a rate formula. This entire discussion revolves about the use of the joint line differentials and the Fourth Section Order. Our discussion of the charts discusses the points made in this part of the brief.

DISCUSSION OF SECTION III OF GEORGIA COMMISSION'S BRIEF (pages 48-57)

This is based upon the theory that the minimum basis of the rates is vague, indefinite and uncertain. A reading of Section II of the brief and the charts heretofore mentioned shows that the rates are not vague, indefinite or uncertain; that they have been clearly ascertained and filed and are definitely set out in appellant's brief (notably at pages 28-29, 42-43). Complaint is made that the words "contemporaneously applicable" as used in the order are indefinite. The Georgia Commission does not object to the construction placed on the order by the District Court in relation to the meaning of the words "contemporaneously maintained" (see pages 54-5 of the brief). That construction is stated by the Georgia Commission (pages 52-53) to be that these words did not refer to rates that may at any time in the future be applicable. While acquiescing in the court's construction of the words "contemporaneously maintained," issue is taken by the Georgia Commission with the words "contemporaneously applicable" (pages 54-55). In our brief (pages 42-48) we have undertaken to set out our views as to the meaning of these phrases. Acquiescence by the appellants in the court's construction of the phrase "contemporaneously maintained" would appear to us to be acquiescence in the construction of the words "contemporaneously applicable." The rates which are contemporaneously applicable to transportation are those which are of file as required by law, and the rates which are contemporaneously maintained are those which are contained in the same filings or tariff above referred to.

DISCUSSION OF SECTION IV OF GEORGIA COMMISSION'S BRIEF (pages 57-88)

Appellant claims that the Commission's reports and orders are void because there are no findings of undue disparity between the rates charged for intrastate transportation in Georgia and the rates actually in force for interstate transportation.

The first criticism in the Georgia Commission's brief is as to the finding that there is no transportation reason for the maintenance of the basis of intrastate rates on these commodities within Georgia different from that there found reasonable for interstate transportation. We have discussed that finding beginning at page 19 of our brief, also at page 54 (See also R. 506, 627, 682).

The Georgia Commission in its brief (p. 59) states that:

> "The Georgia Commission has never contended, and does not now contend, that the conditions are any different, *in general and on the average*, as between intrastate transportation of commodities and their transportation when crossing State lines into, out of, or across the State of Georgia."

That would seem to be a sufficient admission of similarity of circumstances and conditions and of the finding of the Interstate Commission above quoted.

In addition to this, the Georgia Commission (R. 78-79) in its order undertook "to prescribe such rates as will permit of free movement and competition both interstate and intrastate." Besides, the Georgia Commission did not use the words "in general and on the average." The Georgia Commission's statement was (R. 110) that it "has not claimed, and is not here claiming that there should be a different basis of rates on intrastate commerce in Georgia than on interstate traffic into Georgia and out of Georgia or across Georgia." This would seem to

leave the Georgia Commission no room to complain of the Interstate Commission's findings.

This part of the brief seems to proceed on a complete misunderstanding as to what the Interstate Commission has found. The Georgia Commission in its brief (page 59) contends that some elasticity is necessary in the rate structure and that it is provided "only when maximum scales are prescribed." But elasticity is provided in the maximum and minimum scale provided by the Interstate Commission in its order here involved. This section of the brief really is an argument based upon the theory that the Interstate Commission's method of ascertaining mileage is incorrect—a finding which is based on long experience and the trial of many other methods. Southern Classification Case, 100 I.C.C. 513. The Commission's action on that is necessarily final.

Complaint is also made that distance is the only element mentioned in the findings of the Interstate Commission. We submit that that is quite incorrect. The sources of production and the places of consumption were considered in the State and out of the State, the keenness of competition, the characteristics of the commodities, the competition between the commodities themselves as well as between markets, the low price, the effect upon markets brought about by a relatively small difference in transportation charges, the percentage that this traffic bears to the total tonnage, and the percentage which the total revenue on this tonnage bears to the total revenue on all tonnage were all found by the Commission, the uses to which the commodities are placed and the extensive building of highways now in progress were all considered. Furthermore, this particular schedule of rates was applicable in neighboring States. We also point out that there was an agreement, as we have undertaken to show, as to uniformity of conditions. Besides that the Commission in a painstaking manner pointed out the difference between a great

many of the rates, declaring that they were representative of conditions throughout the State.

The remainder of this part of the brief appears to be a complaint against the Commission's using joint line differentials. Still, at page 74 of the brief, it is said:

> "We agree that it is for the rate-making judgment of the Commission to determine whether rates for a joint-line service are reasonably and fairly to be made higher than rates for other single-line services. But this should be done by definite findings and upon a record of evidence which shows the comparative costs or the conditions of transportation governing the various services."

At page 80 it is claimed that there is a conflict between the order of the Commission and the opinion of the District Court for the Northern District of Georgia in the case of Georgia, Southern & Florida Railway Co. vs. Georgia Public Service Commission, 289 Fed. 878, wherein the court in dealing with intrastate rates in Georgia held that:

> "The fact that one railroad company owns a controlling interest in the stock of another company owning and operating a connecting line does not authorize the application of different rules as to traffic relations between them than those applied to other connecting lines."

It should be noted that the Georgia, Southern & Florida case, above referred to, was decided upon an admission that the Georgia Commission made no effort to examine into the propriety of any joint rates or to examine into the question of the fairness or reasonableness of any joint rates; that they simply undertook to enforce Georgia Freight Rule No. 1, which is set out at page 779 of the reported case, which provides in substance that where two or more connecting lines of railroad are operated by or under one management or company or where the majority stock of any railroad company is owned or controlled,

either directly or indirectly, by a connecting railroad line, the lines of the two roads shall be construed to constitute but one and the same railroad. The court's holding was that this was error in the circumstances of the case. It did not hold that under proper investigation such an order might not be sustained.

We have seen that the Georgia Commission's rates are maximum rates and that the carrier has the right, within certain limitations, to charge rates less than the maximum fixed by the Georgia Commission.

The rate from Stockbridge to Brunswick, referred to in the Georgia Commission's brief, on the Southern Railway, is fixed by the Georgia Commission at the maximum of $1.60. The Southern Railway has the right to file a rate of $1.50, that being less than the maximum allowed by the Georgia Commission, and this right is secured to the carrier by the statutes of Georgia empowering the Georgia Public Service Commission and by its rules on the subject which we have heretofore shown. We, therefore, answer the question propounded in the brief by saying that the reduction by the Southern Railway in its rate to Brunswick was by the voluntary act of the Southern Railway under the authority allowed to it under the circumstances above mentioned. The same rule and reason apply to reduction of joint rates between the Southern Railway and the Georgia, Southern & Florida Railway; the Georgia, Southern & Florida Railway being controlled by the Southern Railway.

The Georgia Commission claims that there was little evidence to support the joint line scale (page 81 of its brief). A part of the evidence was that the Georgia Commission had in its order of 1925 itself directed the differentials in these scales and that the Georgia Commission now requires joint line differentials in many commodities, as we have heretofore pointed out. The Commission states that the interstate rates throughout the ter-

ritory and in Georgia are on joint line differentials and that due to the keenness of competition and the lowness of the rates it was necessary to apply this basis of rates, unless adding thereto the small additional burden that would otherwise have to be added to the single line haul would cause discrimination. There are many comparisons of rates based on joint line and single line. These are given extensively in the evidence of the witness Doss, beginning with his Exhibit 98-B, and there are many exhibits showing not only the theoretical rates but the rates for actual movements. These are shown by railroad witnesses and also by the Rate Expert of the Georgia Commission. We have pointed out herein the very direct evidence of the witness Doss on the subject (R. 346).

DISCUSSION OF THE AUTHORITIES CITED ON PAGES 82 AND 83 OF THE GEORGIA COMMISSION'S BRIEF

These authorities are three cases by the Interstate Commerce Commission. Each one of them recognizes that joint line differentials may be allowed, and often should be allowed, over single line rates. These authorities may be summed up in the statement:

> "The reasonableness of a higher charge for a two-line haul must be determined upon the facts and circumstances, not from the application of that principle alone."

The Interstate Commission evidently considered this question from the standpoint of the facts in particular cases, for it found as follows (R. 106):

> "In the original report in these proceedings we gave careful consideration to the question of whether joint-line arbitraries should be prescribed on this traffic. Various cases were referred to in which we prescribed one scale for both single-line and joint-line application on higher grades

of traffic, but after mature consideration, we there reached the conclusion that on this low grade traffic joint-line arbitraries should be prescribed. It might also be added that most of the interests represented there advocated the prescription of joint-line arbitraries. The fact is we have never prescribed for general application in any territory one scale for both single-line and joint-line hauls of this traffic."

In the original report, the Commission found (R. 35):

"The indication is, however, that the joint-line movement is substantial. The carriers and most of the shipping interests agree that in the transportation of these low-grade commodities, some recognition should be given joint-line service by the prescription of differentials over the scale for single line hauls."

The record at this point shows that the Atlanta Freight Bureau and the Georgia Commission opposed joint line differentials on this traffic. We have heretofore quoted from Mr. Doss' evidence as to the need of these differentials on this traffic (R. 346) and his quotations from the opinions of the Commission in other cases. Mr. Doss' Exhibits Nos. 52-57 exemplify his testimony as to the need of joint line differentials. He shows (R. 349) that the Atlantic Coast Line's earnings on crushed stone, slag and washed gravel under the extension of the Georgia Commission's scale would get down as low as 2.7 mills per ton mile (R. 249). He, on the same page of the record, testified that traffic which pays less than 7 mills per ton mile, especially for distances as short as 200 miles, is not desirable.

It would seem that these findings show distinctly that the Commission did consider this particular case in its own circumstances and surroundings and that these findings show that the Commission fully complied with the requirements of the authorities cited on behalf of the Georgia Public Service Commission.

REPLY TO GEORGIA COMMISSION'S BRIEF (pp. 84-88) UNDER THE HEADING: "SAME CARRIERS MUST SERVE PREFERRED AND PREJUDICED POINTS."

This is an argument, in effect, that a discrimination of the kind here involved can be removed only by orders dealing with rate by rate or line by line. It is based on the theory that the "prejudice" must "flow from a common source." The "common source" here is the Georgia Commission's order of March 13, 1928. The argument appears to be based upon a complete disregard of the utterance in the Wisconsin case (257 U. S. 563, 579) that:

> "Any rule which would require specific proof of discrimination as to each fare or rate and its effect would completely block the remedial purpose of the statute."

The action of the Commission would appear to be in exact accord with the proviso to the first paragraph of Section 4 of the Act. That section is set out in full in the Appendix hereto.

The Georgia Commission is given the power (Ga. Code §2630) "by rules and regulations, to designate and fix the difference in rates of freight and passenger transportation to be allowed for longer and shorter distances on the same or different railroads, and to ascertain what shall be the limits of longer and shorter distances." It used this power in its order of March 13, 1928, which is the subject of this litigation. See R. 82 (8) and 81 (5).

ANSWER TO SECTION V OF GEORGIA COMMISSION'S BRIEF (pp. 89-96)

The Georgia Commission claims that there was no substantial evidence of record to sustain a conclusion of unlawful disparity between intrastate and interstate rates.

This contention is reduced to two points (its brief p. 90):

The first of these is, in substance, that there is an absence of showing that individual rates for individual movements in Georgia ought to be the same as the rates charged for individual interstate movement into Georgia, etc.

We refer to our original brief at pages 19-26; 54, 55-58.

Doss' Exhibit 98-B (R. 621) contains many comparisons of individual rates, single line and joint, prescribed by the Georgia Commission in its order of April 1, 1925, and those prescribed by the Interstate Commission in Docket No. 17517, and those prescribed by the Georgia Commission in its order of March 13, 1928. His Exhibit No. 99-B (R. 621) makes further comparisons of these rates. This exhibit deals with "Trunk Lines." These exhibits show the differences between the two scales. His Exhibit No. 100-B "shows the rates on these commodities to 46 Georgia points widely scattered throughout the State and fairly represents the whole situation" (R. 623). At this last reference this exhibit is explained.

See also Exhibit 101-B (R. 625) showing the location of the destinations referred to in Exhibit 100-B, and Exhibit No. 102-B (R. 625) comparing rates and distances on crushed stone from interstate points and from intrastate points.

The witness Crane gave like evidence as to Southern Railway territory (R. 338) and introduced Exhibits Nos. 128 to 156, inclusive. These are of much the same kind as those referred to as having been introduced by the witness Doss.

The witness Boulineau (R. 683) gave the same evidence as to the difference worked by the Georgia scale as compared with the interstate scale from May to August, 1928. That difference was $9,948.63 (R. 684).

The witness Maurer (R. 674) gave detailed evidence as to tonnage in these commodities carried by the Seaboard Air Line Railway in 1926 and 1927, and the location of their producing points in Georgia, Alabama and South Carolina. His Exhibits 143-B (R. 675) and 144-B through 152-B make many comparisons of rates between interstate and intrastate systems as applied to actual transportation over that line, with statements of the revenue under one system as compared with the other.

The witness Burke (R. 681), for the Nashville, Chattanooga and St. Louis Railway, introduced a map of that road, Exhibit 153-B, and showed the principal producing points for these commodities. His Exhibit 155-B showed the rates from Chattanooga, Tennessee, to the principal common and junction points in Georgia contrasted with the scale of the Georgia Commission prescribed by its order of March 13, 1928. His Exhibit No. 156-B showed rates from Cumberland, Alabama, and Chattanooga, Tennessee, to points in Georgia, to which there had been actual shipments of these commodities, together with a comparison of the rates (R. 682).

The witness Youmans gave evidence (R. 638) as to the unfortunate effect of the unequal Georgia rates on the operations of the Ellenton Gravel Company, which operates at Ellenton, South Carolina, on the Charleston & Western Carolina Railroad. The Georgia rates completely eliminated the company from Georgia business, although it had done a large business there, especially in the Coastal regions (R. 639). He used Exhibit 100-B and showed many specific instances of discrimination. This plant is "just over the river out of Georgia" (R. 640), twenty-two miles from Augusta and eighteen miles from the State line. He testified that with rates on the same mileage basis his company could do business in Savannah, Brunswick, Waycross, and that section. He testified that on a number of jobs he had found that he could not bid because of the freight rates (R. 641).

The same kind of evidence was given by Richard Simmons as to the Weston and Brooker Company in South Carolina, 80 miles from the Georgia line (R. 643-4).

H. S. Angle testified (R. 646) for the Dixie Sand & Gravel Company of Chattanooga. He said: "In short, our contention is that there is no justification for different scales on sand, gravel, and crushed stone on interstate traffic than apply on intrastate traffic for hauls of the same length" (R. 647).

The witness Todd, doing business in these commodities at Steel Creek, South Carolina, 30 miles east of Augusta, on the C. & W. C. Railroad, testified to the ill effects of the Georgia rates on his business in Georgia; that he had lost business on which he was working at the time the Georgia rates went into effect. He thinks the rates should be on the same mileage basis (R. 693-4).

E. M. Price, rate expert of the Georgia Commission, gave extensive testimony in this case, beginning at Record 730. He offered many exhibits, 160-B through 180-B. These show the railroads doing business in Georgia and many of the producing points. He testified to the competition between Georgia producers and producers in other states, and to the relative railroad facilities of those producers (R. 732-33).

In a statement by counsel for the Georgia Commission it is stated (R. 733):

> "Among other things there is a statement alluded to by Mr. Price in his comments on this exhibit, that to prescribe within the state of Georgia a joint line scale higher than a single line scale would produce unjust discrimination against Georgia producers and in favor of other Georgia producers."

Thus showing that the joint line differentials were undoubtedly in issue; the Interstate Commission contending for their neces-

sity and the Georgia Commission contending against the propriety of their use.

The exhibits of the Georgia Commission are extensive and put before the Interstate Commission the full strength of the case.

The Interstate Commission thus had before it full evidence as to the contentions of both sides and proof of the effect of the application of the two scales of rates operating at the same time in the same territory.

> "A difference of a few cents in transportation charges frequently affects to a substantial degree the decision of attempting to participate in a given construction enterprise. We watch variations in transportation charges pretty closely and also determine in advance whether we can compete on a given project" (Whiggam—R. 631).

The Commission's findings, in much detail, show that all of this evidence was considered. The ground of objection is apparently based on the use of the Fourth Section Order and the method of ascertaining the mileage. Neither appears to be meritorious. The second ground is based upon the allegation that there is no evidence that transportation service over joint line routes is more expensive than over single line routes. This, as we have shown, is not borne out by an inspection of the record.

REPLY TO SECTION VI OF GEORGIA COMMISSION'S BRIEF (pp. 96-102)

The Georgia Commission argues that there were no evidence or findings that the intrastate rates were an undue burden upon interstate revenues of the carriers or that the alteration thereof would produce additional revenues. At pages 26-30 and 60-63 of our original brief the findings of the Interstate Commission on this subject are set out. The exceedingly low ton mile charge

on these commodities under the Georgia Commission's scale was there shown and the Commission's findings are also shown. The Commission found that this traffic made 22.7 per cent. of the Atlantic Coast Line's traffic during one of the years investigated. The revenue was in much lower ratio. The unit of revenue, the ton-mile charge, is extremely low. The amount of the gross revenue is shown as to several of the roads and estimates made of the increase, had the scale of rates made by the Interstate Commission been in effect. These are pointed out in our original brief at the pages noted. The purpose of this scale was to provide uniform rates in the Southern territory. This has been accomplished in Alabama, South Carolina, Tennessee and Kentucky, except in the western parts of the two last named States. If these rates be increased and made uniform in so large an area, the result must of necessity be increased revenues to the carriers from both interstate and intrastate hauls.

The Georgia Commission's brief shows, as we have pointed out, the existence of "cut-throat" competition. It was necessary to remove this and to do it by rates which would not prefer intrastate traffic over interstate, nor interstate traffic over intrastate. The Interstate Commission has undertaken to do this by system of uniform rates. There must of necessity be increased revenues to the carriers from both interstate and intrastate traffic in these commodities. The record amply shows that the State rate was less, and materially less, than the interstate rate actually charged. The interstate rates were of file and could not be increased or decreased by the independent action of the carrier. The filed rates were the ones actually charged. The State rate charged might have been less than the filed rate, as we have seen.

The Interstate Commission found that there was unlawful discrimination worked against interstate commerce by the Georgia intrastate rates and the extent thereof and made provision for

the removal thereof. This finding was based upon unlawful discrimination against persons, places and traffic and as well against interstate commerce. Both findings are supported by the evidence and by the decree of the lower court.

ANSWER TO APPENDIX II (page X) OF GEORGIA COMMISSION'S BRIEF

The first illustration used in this Appendix is as to transportation from Anniston, Alabama, to Atlanta, Georgia. There are two lines. The long line is 115 miles, made up of the lines of the Louisville and Nashville Railroad and the Seaboard Air Line Railway. The joint line scale is $1.25. This illustration does not show that the short line is the Southern Railway, which is a single line and 104 miles. Its rate is $1.10. The Interstate Commission's order permits the joint line route to meet the rate-making route under the terms of the Fourth Section Order. This illustration is misleading because it leaves off the statement that there is a short line, which is necessary to show the application of the Fourth Section Order. Under similar circumstances the same condition would apply intrastate in Georgia; the carriers being permitted by both the Georgia scale and the Interstate scale to meet the competition of the rate-making route.

The illustration on page XI from Elberton, Georgia, on the Seaboard, to Round Oak, Georgia, a joint line distance of 112 miles, is incomplete for it does not show whether it is or is not a competing line which makes a different rate.

The illustration as to the Georgia, Southern & Florida Railway and the Southern Railway System has been hereinbefore dealt with.

The reference to short and weak lines on page XII is answered by the statement that the arbitraries to these lines, allowed

under the Interstate system and as well under the State system, are optional. They become fixed under the Interstate rates when they are filed, and under the Georgia tariffs they become maximum rates when they are filed. If they are lowered in the use, the lower rate under the Georgia system by that fact then becomes the maximum rate.

The reference on page XIII to the transportation from Stockbridge, Georgia, to Brunswick, Georgia, over the Southern Railway has been heretofore answered.

The illustration on the same page as to transportation from Montgomery, Alabama, to Camilla, Georgia, shows a competition between a single line route, which is 244 miles over the Atlantic Coast Line, and a joint line route, which is less. The principles often stated control that and require the reduction of the rate over the single line to meet the rate over the joint line route which is lower.

Appellant cites the case of United States vs. Missouri Pacific R. R. Co., 278 U. S. 269 (Subiaco Case), to sustain this contention as to these matters last mentioned. It is difficult to understand how that case is applicable to any of the instances cited. That case construed Section 15 (3), (4) of the Interstate Commerce Act, holding that the Interstate Commission could not require a railroad to participate in proposed through routes where a part of the carrier's railroad to be included is slight in length as compared with other parts over which it enjoys long hauls under existing routes between termini the same as those proposed.

No such order is made here; there is no complaint by the carriers as to there being short hauls; the order here is a permission to the carrier with the unfavored line to meet the competition (within limits) afforded by the carrier having the favored or rate-making line.

REPLY TO BRIEF ON BEHALF OF THE STATE HIGHWAY BOARD, AND OTHERS

The first thought in reference to this brief is that there should have been no appeal. As we have pointed out in our original brief (page 7), the bill filed by the State Highway Board, and others, was consolidated into the case of Georgia Public Service Commission, et al, vs. United States of America, et al, in Equity No. 563, and the litigation has proceeded as one case under the title of the last named bill (R. 159-60). There was but one case and there should have been but one appeal.

DISCUSSION OF THE STATEMENT OF "THE ISSUES PRESENTED" (page 4)

There are seven issues stated. The first is that there was neither evidence nor definite findings justifying the regulation of all intrastate rates. We have discussed these questions at length. There was certainly sufficient evidence and certainly the findings were definite and the tariffs filed show definite application. We presume that the indefinite claim is based upon the Fourth Section Order and the method of ascertaining mileage. The Georgia Commission's order provides for Fourth Section relief, as we have pointed out, and it also provides the same kind of method for ascertaining mileage as that used by the Interstate Commission.

The second point is that the order attempts to regulate intrastate rates based on future action of the railroads. This is evidently based upon the use of the words "contemporaneously applicable" in the order, and we have discussed that.

The third point is that the order prescribes joint line differentials which create discrimination against intrastate shippers. The Georgia Commission has itself prescribed joint line differentials for the same traffic in its order of February 25, 1925,

and now prescribes joint line differentials as to traffic in a good many other articles. The Interstate Commission has determined that those differentials are necessary to avoid discrimination, and certainly that finding was on sufficient evidence.

The fourth point is that the order purporting to bring intrastate rates into harmony with interstate rates conflicts with the limitations put on the Federal Commission by the Constitution, the Interstate Commerce Act and the decisions of this Court. This is evidently based on a misinterpretation of the word "harmony." The Interstate Commission found that the State rates unjustly and unlawfully discriminated against persons and places and traffic, etc., and against interstate commerce, and prescribed its system of rates to remove this discrimination. The State Commission claims that its system is necessary to remove discrimination and the Interstate Commission claims that its system is necessary. Of course, the Interstate Commission's determination on that fact overrides the State Commission.

The fifth point is that the order cannot be sustained under Sections 3 or 13 of the Interstate Commerce Act. This is probably also based on a misconstruction of the word "harmonize." The Commission understood that the absence of harmony between the two systems was so great as to make discrimination prohibited by Sections 3 and 13.

The sixth point is that there was no adequate and fair hearing. This is based on the theory that the case was not so reopened to redetermine whether or not the Interstate rates fixed by the Commission's order of January 21, 1927, were reasonable. We have discussed that.

The seventh point is that all the reasons combined show arbitrary action on the part of the Interstate Commerce Commission. That is apparently thrown in for good measure.

FIRST POINT

We have heretofore pointed out that the Interstate Commission's findings and order (R. 110-113) undertook to change only those intrastate rates which were lower, distance considered, than the interstate rates contemporaneously applicable, and the discrimination which was found was to the extent that the intrastate rates were lower. We have shown the statewide investigation made by the Commission, including points of origin within Georgia and without Georgia of these commodities, their nature, the keenness of competition, and the points of destination which were considered. The record abounds in carefully collated facts made up not only of large amounts of exhibits comparing rates but also of testimony of shippers out of the State showing that the Georgia rates had entirely eliminated them from the Georgia market. The brief seems to take no notice of the fact that there was an agreement in this case at the first hearing that the conditions throughout the territory were such as to warrant a uniform rate level on these commodities, nor does it give effect to the evidence showing the volume of the traffic, the gross revenues therefrom, the difference which would have been produced in the way of revenues if the interstate scale had been used. The Commission found the characteristics of the commodities and the uses to which they were being placed, and that these rates were already in effect in other states in the general territory. The rates were made for the purpose of moving the traffic. The findings of the Commission as to the difference in revenue which would have accrued to several of the carriers mentioned under the interstate rates over that which accrued to them under the intrastate rates must be taken in connection with these facts and with the findings that the Georgia rates produced discrimination against interstate commerce.

The Interstate Commission had found what were the reasonable rates and fixed those in its order of January 21, 1927. It

then found uniformity of conditions and that there was no reason why there should be a difference in the transportation charges on these commodities in Georgia simply because they moved interstate or intrastate.

The brief stresses the fact that the Interstate Commission expected the State of Georgia to bring its rates "into harmony" with the Interstate system. This overlooks the context in which those words are used. The order reopening the case is at R. 86-87. It is there shown that the case was reopened for the sole question of determining whether or not the Georgia rates on these commodities in relation to the interstate rates and minimum weights cause, or will cause, "any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate commerce or foreign commerce, on the other, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce." Appellant refers to the use of the words "in harmony with" on page 92 and also on page 93 of the record, but a further reading of the text at page 93 shows the use of the same language as that last above quoted from page 87. So it would seem quite clear that the Interstate Commission has not treated the words "in harmony with" to have a meaning outside of its jurisdiction under Sections 3 and 13 of the Act.

SECOND POINT

The second point of the Highway Board's brief is that "The order assailed attempts to regulate intrastate rates based on future action of the railroads."

We discuss that at page 42 of our original brief and also at page 38 of this brief.

The Highway Board's brief differs substantially in its position from that taken by the Georgia Commission on this subject.

The Georgia Commission (pages 54-55 of its brief) has no objection to the construction placed by the District Court on the words "contemporaneously maintained." The Highway Board in its brief does take issue with those words rather than with the words "contemporaneously applicable." Both of them proceed upon the theory that if it be possible to so construe an order that it will produce an illegal result, that construction should be had. The rule as pointed out in the court below is, of course, to the contrary.

At page 14 of the Highway brief, reference is made to the fact that the carriers in many instances were publishing lower rates interstate than the maximum rates prescribed by the Commission in 17517. That was, of course, before the issuance of the order of December 9, 1929. We have pointed out in our original brief (page 52) the Interstate Commission's reply to that statement, which was in effect that such instances of such departures as existed were the result of error which would be corrected. There is no evidence of a departure from the Commission's interstate scale of rates by the carriers since that time. The Commission, in referring to this complaint as to the alleged failure of the filed rates to meet the ordered ones, said (R. 108):

> "An examination of this data discloses that with few exceptions the instances given are simply where different routes are, under the authorized fourth-section relief above referred to, meeting at competitive points the rates set by the rate-making route."

THIRD POINT

This point of the Highway Board's brief is that "the order prescribes joint line differentials which create discriminations against intrastate shippers."

Instances of discrimination against intrastate shippers are not pointed out. We have in both our original brief and in this reply brief treated with the question of joint line differentials. It is worth while noting that the Highway Board's brief, in quoting from the evidence of Rate Expert Price of the Georgia Commission, shows that that Commission did create joint line differentials on brick in one of its proceedings. The Interstate Commission had fixed joint line differentials on brick and the Georgia Commission adopted it. The evidence also shows that the Georgia Commission in its order of 1925, on the commodities here involved, did fix joint line differentials on brick. We have shown that joint line differentials have been fixed by the Georgia Commission on a good many commodities. There is no more reason for saying that the joint line differentials or that the long and short haul provisions make discrimination in this instance than in any other instance in which they are or may be used. Discrimination is, of course, a question of fact and all the evidence referred to or quoted in the Highway Board's brief and in the Georgia Commission's brief was before the Interstate Commission, and we are assured by the Commission, as we have heretofore pointed out, that careful consideration was given to the subject of joint line differentials and they found it necessary to apply this rule in this case to avoid this contention. It may be that, as is shown in the Highway Board's brief, there has been a tendency to prescribe rates without joint line differentials, but it would be futile for the Georgia Commission to argue that joint line differentials are never used when it has itself applied them to these identical commodities and is now applying them to many other commodities. Manifestly the use of these differentials is a matter of determination by the respective Commissions acting within their respective

jurisdictions. When that action is had under sufficient evidence, it is final.

The argument which undertakes to show that the Interstate Commission's rates caused discrimination between intrastate shippers loses its value because of its indefiniteness and because it does not take into consideration the fact that the Georgia rate system leaves the carriers substantial freedom in that the Georgia rates are only maximum rates and also because, as was pointed out in the court below, the Georgia Commission itself has substantial control over many of these rates, which control might very well be used to relieve any improper disparity between rates. Furthermore, the Interstate Commission has the right to remove those disparities which are unjust and unreasonable, and under the authority pointed out in the Wisconsin case, in the 257th U. S., 579, which is referred to in the Commission's report (R. 110), the Commission has the right to exercise and will exercise the power to remove such discrimination.

Viewing this argument on the part of the Highway Board in its context, we think that it means that joint line differentials should not have been allowed and that the Fourth Section Order should not have been issued.

The Commission does not require the "maintenance over all routes between two given points of the rate established via the rate-making route" (R. 109). The Commission there states that the argument to that effect "is without merit."

FOURTH POINT

This point of the Highway Board's brief is that "the order under attack is predicated upon an assumed power to 'harmonize' State and Interstate rates."

We have hereinbefore referred to this. This is a continued attempt to use the word "harmony" or "harmonize" to mean equality. The Commission's findings and orders show that the Interstate Commission undertook to use harmony or want of harmony to express the absence or presence of unlawful discrimination. The Commission recognized that bare difference between interstate and intrastate rates is not unlawful per se, but that the thing which is unlawful and which the Commission has the power to remove is an unjust and undue discrimination, preference or prejudice against persons and localities, or discrimination against interstate commerce worked by intrastate rates. The proceedings were reopened to ascertain whether or not the Georgia rates on these commodities cause or will cause any undue or unreasonable advantage, preference or prejudice or any undue, unreasonable, or unjust discrimination against interstate rates (R. 87).

FIFTH POINT

This point of the Highway Board's brief is that "the order cannot be sustained under Sections 3 or 13 of the Interstate Commerce Act."

The first point under this heading is as to the use by the Interstate Commission of the word "harmonize." We have answered that.

The next statement is that such order will include many rates not within the proper class or reason of the order. No rates are pointed out and the Interstate Commission's order undertook to alter only those Georgia rates which were lower than the Interstate rates.

The next point is that the method of ascertaining mileage of

the Georgia Commission is different from that of the Interstate Commission. We think if that were correct the conclusion drawn therefrom would not follow. The statement is not correct. We have discussed the Georgia Commission's method of ascertaining mileage in such circumstances.

The next point is based upon the difference in gradations between the two scales of rates. The lower court found in the second hearing that this point had been abandoned, as we have heretofore pointed out, but whether abandoned or not the Interstate Commission's gradation was made with full knowledge of the State's scale and its gradation, and the Interstate Commission determined that the scale which it fixed with its gradation was necessary to remove the unlawful discrimination worked by the Georgia scale. This seems to be simply a detail of rate-making, clearly within the domain of the superior rate-making authority.

SIXTH POINT

This point is that "there was no adequate and fair hearing."

This has been discussed in our original brief (pages 34 and 41) and in this brief. There is little to be added. The record in the original hearing in this docket number before the Commission was relevant in the second hearing in the same proceeding to show the reasonableness of the rates prescribed by the Interstate Commission in its first order of January 21, 1927. The parties in the second hearing included those in the first and those who came into the case in the nature of intervenors.

The objection pointed out in the Highway Board's brief (page 31) is first to the effect that the Commission had no jurisdiction

under Section 13 and that "the petition in that case cannot be filed as a supplemental petition because it is based on facts arising after the hearing of the original case, and for other reasons specifically set forth in my answer heretofore filed in this case." The usual office of Supplemental pleadings is to set up matters happening after the filing of the original pleadings.

The Commission (R. 59) in effect left the case open at the time of making the first report, for it said: " * * * because it is felt that the Georgia Commission will cooperate in authorizing such revisions as may be necessary to bring their rates into harmony with the interstate adjustment herein approved." The Georgia Commission didn't do that and the case was reopened.

The next objection (page 32) is in effect to the consideration of the record in the first hearing. There is no assignment of any cause of objection, but just a general assignment equivalent to "I object." Such an objection is of no value whatever. Furthermore, it is clearly manifest that the record was usable for a good many purposes and certainly to show that the rates prescribed in the first order were reasonable. Those rates were in effect at the time of the second hearing and there was a presumption of reasonableness attached to them.

The next objection (page 32) is to the record, and Mr. Watkins there states "the clients of mine not having been in the former case, and this being to them entirely new."

The Georgia State Highway Commission, Fulton and DeKalb Counties, Georgia, City of Atlanta, Georgia, Atlanta Freight Bureau, Morac Sand Company of Junction City, Brown Brothers of Junction City, and certain other Georgia Sand and Gravel Dealers for whom appearance was entered by Mr. Watkins

(R. 614) came into the second hearing as though they were intervenors and, therefore, took the case as they found it.

We respectfully submit that the decree of the lower Court should be affirmed.

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APPENDIX

SECTION 4 OF THE INTERSTATE COMMERCE ACT:

SEC. 4. (*As amended June* 18, 1910, *and February* 28, 1920.) (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to the provisions of this Act, but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided,* That upon application to the Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section; but in exercising the authority conferred upon it in this proviso the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and if a circuitous rail line or route is, because of such circuity, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include intermediate points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points; and no such authorization shall be granted on account of merely poten-

tial water competition not actually in existence: *And provided further*, That rates, fares, or charges existing at the time of the passage of this amendatory Act by virtue of orders of the Commission or as to which application has theretofore been filed with the Commission and not yet acted upon, shall not be required to be changed by reason of the provisions of this section until the further order of or a determination by the Commission.

(2) Wherever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless after hearing by the Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

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IN THE

Supreme Court of the United States

October Term, A. D. 1930

No. 555

GEORGIA PUBLIC SERVICE COMMISSION and JAMES A. PERRY, ALBERT J. WOODRUFF, WALTER R. McDONALD, CALVIN W. PARKER, and PERRY T. KNIGHT, as COMMISSIONERS THEREOF,
Appellants,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION,
Appellees.

Consolidated With

STATE HIGHWAY BOARD OF GEORGIA, et al.,
Appellants,

v.

UNITED STATES OF AMERICA, et al.,
Appellees.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

May it please the Court:

The undersigned, as counsel for The American Short Line Railroad Association, an unincorporated associa-

tion of short line railroads, which was a party to the proceedings before the Interstate Commerce Commission, known as *I. C. C. Docket No. 17517*, for and in behalf of certain of its member short line railroads which it represented in said proceedings before the Interstate Commerce Commission, respectfully move this Honorable Court for leave to file the accompanying brief in this case as amici curiae.

MOULTRIE HITT,
G. KIRBY MUNSON,
BEN B. CAIN,
Counsel for The American Short Line Railroad Association,
Union Trust Building,
Washington, D. C.

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Brief of Ben B. Cain, Moultrie Hitt and G. Kibby Munson, as Amici Curiae, in Support of Appeal

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OPINIONS

The opinion of the specially constituted District Court, refusing an interlocutory injunction, is reported as *Georgia Public Service Commission et al. v. United States et al.*, 39 Fed. (2d) 167. The final opinion of the same Court, holding valid the order of the Interstate Commerce Commission, and dismissing the bills, is reported under the same title, 42 Fed. (2d) 467.

The Commission's order sought to be set aside in this proceeding appears in *Rates on Chert, Clay, Sand and Gravel Within State of Georgia*, 160 I. C. C. 309 (R. 88).

STATUTES

The only statutes involved in this case, save the procedural laws governing the filing of the suit and the appeal, are the Interstate Commerce Act and acts amendatory thereof. The material sections hereinafter referred to are printed as Appendix "B" to this brief.

PRELIMINARY STATEMENT

The petition upon which the Interstate Commerce Commission instituted its investigation of Georgia intrastate rates on chert, clay, sand and gravel, and other allied commodities (hereinafter collectively referred to as sand and gravel) under Section 13 of the Interstate Commerce Act was filed by the Atlantic Coast Line Railroad Company and eight short line railroads operating in the State of Georgia (R. 188). The Commission's order of inquiry made all the railroads operating within the State of Georgia respondents (R. 204). The American Short Line Railroad Association, through its Traffic Manager at Atlanta, Georgia, acted for and in behalf of a majority of the short line railroads respondents in that proceeding. It is therefore an appellant *in spirit* before this Court.

Prior to the filing of such petition the Georgia Public Service Commission had prescribed by its order of February 25, 1925, certain maximum scales of so-called *single-line* and *joint-line* rates which the short line petitioners believed were unduly low and would operate to further accentuate their already depressed financial condition (R. 188).

The objective sought by the short lines was an authorization for a higher level of rates *coupled with authority to apply such lesser rates* as would enable the producers of sand and gravel located on the short lines to meet on even terms the competitive producers located on large lines (R. 475-6).

The investigation of Georgia intrastate rates by the Interstate Commerce Commission under Section 13 of the Interstate Commerce Act, as amended, was coupled with the consideration of interstate rates on the same commodities, and resulted in a first, second and a third report and order in the same proceedings.

(1) The First Report and Order—Jan. 21, 1927—122 I. C. C. 133

In its first report and order herein, 122 I. C. C. 133 (R. 12), at page 169, the Interstate Commerce Commission referred to the broad-minded attitude of the Georgia Commission, and stated that, considering the results brought about by the Georgia Commission's said order of February 25, 1925, *it could not be found from the record to have brought about a rate situation which had in the past been unjustly discriminatory*

against interstate commerce. Hence the Commission made no order as to Georgia intrastate rates. It did, however, prescribe a new system of *interstate* rates *as a maximum.* The new system of *interstate* rates *departed from the Commission's usual principles* (Appendix A hereto), and consisted of an admittedly low basic scale of rates for single line hauls, coupled with an *intended-to-be-compensatory* permission to the carrier to offset the loss of revenue from sub-normal single line rates, to charge a substantially higher scale of rates for joint line hauls. (R. 52).

This unexpected solution naturally would not be unacceptable to the Class I roads and to the producers located on Class I roads, but it was to the disadvantage of the short line railroads and the producers located on the short line railroads.

"... a single scale without joint-line arbitraries has great practical advantages, particularly in simplicity of tariff construction, and can be justified upon other grounds as well. In the case of the commodities under consideration, however, there is, perhaps, more basis for joint-line arbitraries than in the case of any other form of traffic. The very low value of these commodities makes the cost of transportation a most vital matter, *and it may well be that even the slight increase in rate level over the single-line routes which the elimination of joint-line arbitraries would entail ought to be avoided.* Undoubtedly the greater proportion of this traffic moves over such routes. At all events we have reached the conclusion that in the case of these commodities joint-line arbitraries may reasonably be permitted, but should be of lesser amounts and disappear at an earlier stage of the scale than the carriers propose. But this should not be construed as an indication that we favor joint-line arbitraries in the case of traffic of higher grade." (Italics supplied.) (122 I. C. C. 133, 164.) (R. 52.)

(2) The Georgia Commission's Action Following the Interstate Commerce Commission's First Report and Order

The Georgia Commission, *in the light of the said first report and order* of the Interstate Commerce Commission of January 21, 1927, *122 I. C. C. 133* (R. 12), and after a further hearing, next prescribed a revised schedule of one-scale rates for both single-line and joint-line hauls (R. 76). With minor differences, the new Georgia scale corresponded to the scale prescribed by the Interstate Commerce Commission for single-line hauls, hence the controversy herein is really motivated more by the complications and ill-adjustments which result from a double scale of rates than from the *level of rates* prescribed by the single-line scale.

(3) The Second Report and Order, March 5, 1928—140 I. C. C. 85

The second report and order by the Interstate Commerce Commission of March 5, 1928, *140 I. C. C. 85*, relates to incidental phases not immediately involved and it is not necessary to consider the same herein.

(4) The Third Report and Order, December 9, 1929—160 I. C. C. 309

The third report and order of the Interstate Commerce Commission of December 9, 1929, *160 I. C. C. 309* (R. 88), is the one directly involved in this proceeding, for it is the validity of that report and order which is in question.

Said third report and order undertakes to substitute for the latest Georgia Commission one-scale *maximum* system of rates a combined scale of *maximum and minimum* single-line and joint-line rates corresponding to its own maximum (but not minimum) scale of interstate single and joint-line rates. Therefrom arise the many examples of uncertainty, inconsistency, complications, and difficulty so well described in the brief for the Georgia Public Service Commission, Appellants, that it will save the time of the Court not to multiply additional examples herein.

The position of The American Short Line Railroad Association is not that the Interstate Commerce Commission has no jurisdiction in a proper case, supported by proper evidence and on proper findings, to enter an order for the removal of undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against or burden upon interstate commerce under Section 13 (4) and/or under Section 15-a of the Interstate Commerce Act, but that the order of the Interstate Commerce Commission here under attack is invalid because it is not a proper order, supported by proper findings, or properly supported by evidentiary facts which are essential to the exercise by the Commission of any jurisdiction herein.

ASSIGNED ERRORS TO WHICH THIS BRIEF IS ADDRESSED

This brief is addressed to the following assigned errors (R. 174, 175, 176, 177, 178):

The Court erred:

1. In not concluding and decreeing that there was no adequate finding by and no substantial evidence before the Interstate Commerce Commission authorizing or justifying that Commission in regulating and prescribing intrastate rates on sand, gravel, clay gravel, crushed stone, and slag within the State of Georgia and in not enjoining and annulling the orders of such Commission sought to be enjoined and annulled in this cause.

2. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that said orders are erroneous and invalid because they purport to rest on the principle that the rates ought to be higher for so-called joint line movements over the lines of two or more carriers than for corresponding distances over the individual line of a single carrier, and there was no evidence before the said Commission tending to establish or support such principle or to show that transportation over joint lines is necessarily more expensive than over single line routes.

3. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that aforesaid reports and orders are erroneous and invalid because the record of evidence on which they were entered does not show the transportation condi-

tions, or the circumstances and conditions under which aforesaid materials actually are transported for the respective intrastate movements within the State of Georgia and interstate movements into and out of said state, and, therefore, the record affords no basis for determining the similarity or dissimilarity of the actual services under said intrastate rates, on the one hand, and under the interstate rates, on the other hand.

4. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that they are erroneous because there is no substantial evidence of record in the proceedings wherein they are entered warranting or requiring a finding that the rates for transportation of the materials in question now charged, or which are made or imposed by authority of the State of Georgia, or any of said rates, for said interstate transportation, cause any undue or unreasonable advantage, preference or prejudice, as between persons or localities in intrastate commerce in the State of Georgia, on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, or any burden upon interstate or foreign commerce; and, in fact, the aforesaid intrastate rates are not preferential, or prejudicial, or discriminatory, or burdensome.

5. In not enjoining and annulling the orders of the Interstate Commerce Commission sought to be enjoined herein, for the reason that the aforesaid reports and orders are erroneous and invalid, because the said Commission therein undertakes to require reductions in intrastate rates within the State of Georgia, which are wholly beyond the

jurisdiction of said Commission to reduce under Section 1 of the Interstate Commerce Act, par. 2, sub par. (a); and because the rates therein required tend to create and will create unjust discriminations and undue preferences as among different and competing shippers and producers of said materials in Georgia, in violation of the statutes of said state governing such intrastate transportation.

SUMMARY OF ARGUMENT

The Interstate Commerce Commission has in this case no authority or jurisdiction to establish intrastate rates within the State of Georgia because (1) the Commission made no findings of fact sufficient to justify the conclusion that there existed any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce in Georgia on the one hand and interstate commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce, and (2) that there was before the Commission no evidence of record sufficient to have supported such a finding.

ARGUMENT

The Jurisdiction of the Interstate Commerce Commission

Text: *"For the power of the Commission is dominant only to the extent that the exercise is found by it to be necessary to remove the existing discrimination against interstate traffic."—American Express Company v. South Dakota, 242 U. S 617, 625, 61 L. Ed. 1352, 1358.*

In its decision of January 5, 1931, in *Florida et al. v. The United States*, 75 L. Ed. (Adv. 212), this Court repeated what it has in substance said before, i. e., that the power of Congress to authorize the Interstate Commerce Commission to establish intrastate rates in order to remove an unjust discrimination against interstate commerce is not open to dispute, and that, in the exercise of this power, the Congress has given to the Commission authority not only to remove an undue prejudice as between persons or localities, but to establish a statewide level of intrastate rates when this is found necessary to accomplish the purpose of the statute. This Court went on to say, as may properly be said in this case, that the question is not one of authority but of its appropriate exercise, and the propriety of that exercise must be tested by its relation to the purpose of the grant and with suitable regard to the principle that—

> *"whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the fed-*

eral power must clearly appear. Illinois Central Railway Company, supra. The Commission has no general authority to regulate intrastate rates and *the mere existence of a disparity* between particular rates on intrastate and interstate traffic does not warrant the Commission in prescribing intrastate rates." (Italics supplied.)

The Commission's Analysis of the Evidence

It is in the record of the evidence before the Commission that the justification for the exertion of federal power by the Interstate Commerce Commission in this case must be sought. But in that search we can principally rely upon the Commission's own analysis, made in its report (R. 88), for after all, if the Commission's own analysis and findings do not indicate that there was adequate evidence upon which to found the jurisdiction of the Commission to interfere with intrastate rates, either on the basis of any existing undue prejudice as between persons and localities under Section 13 (4) of the Interstate Commerce Act, as amended or as to any burden on interstate Commerce under 13 (4) as construed together with Section 15-a, it is unnecessary to go behind those findings to also show that the underlying evidence was inadequate to support such jurisdiction. That this is so, this Court said in *Florida et al. v. The United States, supra,* as follows:

"The question is not merely one of the absence of elaboration or of a suitably complete statement of the grounds of the Commission's determination, to the importance of which this Court has re-

cently adverted (*The Beaumont, Sour Lake & Western Railway Company v. United States*, decided November 24, 1930, 282 U. S. ——), but of the *lack of the basic or essential findings* required to support the Commission's order. In the absence of such findings, we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit.

* * * * *

"We conclude that the portion of the order of the Commission which is now under review, with respect to intrastate rates, is not supported by the findings of the Commission and this part of the order must be set aside." (Italics supplied.)

The question then is, first, what were the relevant and material findings upon the question of an undue prejudice to persons or localities or any undue burden on interstate commerce.

There Is an Absence of Basic or Essential Findings: The *first report* of January 21, 1927, *122 I. C. C. 133* (R. 12), was in large measure a review of the past history of the maze of inconsistent and chaotic interstate rates on the commodities in question, and of the situation as it then stood. It gave credit to the Georgia Commission for its broad-minded attitude and constructive efforts which had materially improved the prior situation; and on the point of undue prejudice to persons or localities, or burden upon interstate com-

merce, after referring favorably to the Georgia Commission's order of February 25, 1925, it specifically said:

> "Considering the results brought about by this order (the Georgia Commission's order) it could not be found from the record to have brought about a rate situation which has in the past been unjustly discriminatory against interstate commerce."

The *second report* of March 5, 1928, *140 I. C. C. 85*, dealt with interstate rates to and from Florida, and is irrelevant to this proceeding.

The *third report of December 9, 1929, 160 I. C. C. 309* (R. 88), is, therefore, the only place in which to look for any finding which might support the Commission's order therein, and *all* of those findings are as follows (R. 110):

> (1) "We find that the circumstances and conditions affecting intrastate transportation within Georgia and interstate transportation between points in Georgia, and from points in other States in southern territory, except Florida, to points in Georgia are substantially similar.
>
> (2) "We further find that respondents' rates applicable to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel, crushed stone, and slag, in carloads, between points in Georgia, to the extent that they are lower, distance considered, than the interstate rates contemporaneously applicable to the transportation of the same commodities between points

in the State of Georgia, and from points in other states in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities, in straight or mixed carloads, according as said respondents participate in said intrastate and said interstate transportation, result and will result in undue preference and advantage of shippers and receivers of freight in intrastate commerce within the said State of Georgia and in undue prejudice to shippers and receivers of freight in interstate commerce between points in the State of Georgia, and points in other states in southern territory, except Florida, to points in Georgia, and in unjust discrimination against interstate commerce.

(3) "We further find that said undue preference and undue prejudice and unjust discrimination can and should be removed by the establishment, maintenance and application to intrastate traffic between points in the State of Georgia of rates which shall not be lower, distance considered, than those contemporaneously applicable to the transportation of interstate traffic between points in the State of Georgia, and from points in other states in southern territory, except Florida, to points in Georgia, not exceeding the rates set forth in the appendix to this report and heretofore found reasonable in these proceedings for said interstate transportation.

(4) "We further find that the rates maintained and applied by defendants in No. 17763 to the intrastate transportation of sand, gravel (washed or unwashed), clay gravel, and crushed stone, in

carloads, from and to points of origin and destination in Georgia, to the extent that they are lower, distance considered, than the interstate rates contemporaneously applicable to the transportation of sand, gravel (washed or unwashed), and clay gravel, in straight or mixed carloads, from Montgomery, Ala., to the same destinations in the State of Georgia, not exceeding the rates set forth in the appendix to this report and heretofore found and prescribed as reasonable in No. 17763 for the interstate transportation by the said defendants of the said commodities from Montgomery, Ala., in straight or mixed carloads, according as said defendants participate in said intrastate and said interstate transportation, result and will result in undue preference and advantage of intrastate shippers between points of origin and destination in Georgia and in undue prejudice and disadvantage to complainant Roquemore Gravel Company at Montgomery in shipping in interstate commerce to the same destinations in the State of Georgia.

(5) "We further find that said undue preference and advantage and undue prejudice and disadvantage can and should be removed by the establishment, maintenance, and application by said defendants on the aforesaid intrastate traffic from points of origin in Georgia to destinations in the State of Georgia of rates which shall not be lower, distance considered, than those contemporaneously applied to the transportation of the aforesaid interstate traffic from Montgomery, Ala., to the same destinations in the State of Georgia, not exceeding the rates set forth in the appendix to this report and heretofore found reasonable in these proceedings for said interstate transportation.

(6) "The evidence presented does not here justify a finding that the minimum weight prescribed by the Georgia Commission results or will result in undue preference and advantage to Georgia shippers or in unjust discrimination against interstate commerce; nor does the record afford a sufficient basis for a finding of undue prejudice respecting the rates from Chattanooga." (R. 110.)

An examination of these findings, and of the Report of which they form a part, clearly reveals what this Court has termed "the lack of the basic or essential findings required to support the Commission's order", in the absence of which "we are not called upon to examine the evidence in order to resolve opposing contentions as to what it shows or to spell out and state such conclusions of fact as it may permit" *(Florida et al. v. The United States, supra)*. To make this fact *the more obvious the following analysis of each finding is respectfully submitted:*

Finding 1: The circumstances and conditions affecting intrastate transportation within Georgia and interstate in and out of Georgia are substantially similar.

Comment: If such a broad generalization means that similar advantages or disadvantages of transportation conditions can be found with respect to carriage within Georgia as with respect to carriage out of Georgia, that might be true, for indeed such a statement would be almost universally true with regard to other states.

If it is intended to mean, however, that every haul between every point of production and every point of consumption is substantially similar, the Court could take judicial notice of the fact so commonly known, that in many respects other than in length of haul the transportation conditions from several competing points of production to a common market or markets vary widely.

Nor is it readily perceivable how a general substantial similarity of transportation conditions within and without Georgia justifies a scale of higher rates per ton per mile from certain points of production than from other points of production to the same common market.

Finding 2: Such intrastate rates as are *"lower,* distance considered, than the interstate rates *contemporaneously applicable"* on interstate traffic, and not higher than the scales theretofore prescribed as *maxima* for interstate traffic, result and will result in (1) undue prejudice to persons and localities in interstate commerce, and (2) unjust discrimination against interstate commerce.

Comment: This finding states a mere conclusion unsupported by a basic or essential finding. Furthermore, since the carriers interstate are required only to observe the interstate scales as *maxima,* with the unrestricted privilege of making rates lower than the scale, when necessary or desirable to meet the competition of rates made by the use of a scale rate applicable to routes shorter in distance, and with no minimum

rates prescribed for interstate application, the carriers intrastate are left in a state of much obvious uncertainty and doubt as to which of their existing rates are and which are not condemned as allegedly resulting in prejudice and discrimination.

Finding 3: Said undue prejudice and unjust discrimination can and should be removed by the application to intrastate traffic of *minimum* rates not lower than those *contemporaneously applicable* to the transportation of interstate traffic, and not exceeding the scales prescribed as *maximum* rates on interstate traffic.

Comment: The same comment made on Finding 2 also applies to this Finding 3 for this finding states another mere conclusion unsupported by a basic or essential finding. In this respect the carriers intrastate are left in an even greater state of obvious uncertainty and doubt as to which of their intrastate rates would or would not be lower than the contemporaneously applicable interstate rates which the carriers interstate are at liberty to lower and vary *in future* from time to time as they deem necessary or proper.

Findings 4 and 5 relate to another case, known as I. C. C. Docket 17763, and are not herein relevant.

Finding 6 is not relevant or material herein.

In the absence of any basic findings essential to justify its conclusions, it is apparent that this proceeding has not been shown to be one in which the Inter-

state Commerce Commission has any jurisdiction to enter an order. This is a proceeding under Section 13 of the Interstate Commerce Act, and the power thereunder of the Interstate Commerce Commission to supersede the rate schedules of the Georgia Public Service Commission and to prescribe schedules of its own to apply to traffic which is wholly intrastate in the borders of the sovereign State of Georgia depends upon the existence of a *substantial* rate disparity which operates as a real discrimination against and obstruction to interstate commerce (*Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co.*, 257 U. S. 563), and there is no sufficient finding in this respect to show that there is any such disparity.

The Commission's Review of the Evidence: Going behind the Commission's findings, the Commission's own review of the evidence in its third report and order, *160 I. C. C. 309* (R. 88), shows that the evidence consisted of nothing more substantial than a mere mathematical calculation which showed that if the interstate scales had been applied to the actual intrastate movements for specified periods there would have been produced a different aggregate revenue, as the following quotations from the review clearly indicate (R. 100):

> "It was *computed* that the 17517 basis of rates, if applied to 2,342 carloads of this traffic which originated in Georgia on the Southern, including shipments received by that line from the Gainesville & Northwestern at Gainesville, Ga., during the four months' period ended August 31, 1928, would have produced $12,000 more revenue than was produced by the application of the Georgia

scale. This is equivalent to $36,000 computed on an annual basis.

"This traffic is important to the Seaboard Air Line. During the year 1927 that line handled 5,213,183 tons of these materials which was equivalent to 25.5 per cent of its total tonnage for that period. The Seaboard has important producing points on its line in Georgia, for example, at Oglesby, Ladds, and Portland, Ga.; and outside of Georgia, within competing range, at such points as Birmingham, Montgomery, and Ragland, Ala.; and at Columbia and Samlay, S. C. During the five months' period ended May 31, 1928, the Seaboard handled 14,892 tons of slag from Alabama producing points to points in Georgia. These slag shipments were charged the 17517 basis of rates and produced revenue amounting to $21,196. The application of the Georgia scale to this movement would have produced $617 less revenue.

"During the six months' period ended June 30, 1928, 23,096 tons of sand and gravel moved from Alabama producing points to Georgia destinations. Most of this tonnage moved from Montgomery. Charges were assessed on these shipments based on the 17517 scales and amounted to $32,778. The application of the Georgia scale to this movement would have produced $2,511 less revenue, or a decrease of 7.7 per cent. During the months of May, June, July and August, 1928, a period immediately succeeding the date when the Georgia scale became effective, 50,687 tons of crushed stone, sand, and gravel originated at producing points in Georgia on the Seaboard and moved to destinations in Georgia. Charges were collected on these shipments based on the Georgia scale. Such charges were $7,307 less than they would have been if based on the 17517 scales. This

is equivalent to about $22,000 computed on an annual basis.

"The Georgia Railroad and the Atlanta & West Point are located entirely within the State of Georgia. There is a large interstate movement of this traffic from the Montgomery district over the Western Railway of Alabama in connection with the Atlanta & West Point. During the year 1927 the Georgia Railroad, Western Railway of Alabama, and the Atlanta & West Point handled 507,753, 714,148 and 379,380 tons of these commodities which constituted 17.03, 29.99 and 20.78 per cent of the total tonnage handled by each respectively during that period.

"During the four months' period ended August 31, 1928, 100,515 tons of these commodities originated on the Georgia Railroad and moved to points in Georgia. Charges were assessed on this movement based on the rates under the Georgia scale. They are shown to be $9,148 less than would have accrued on the basis of the 17517 scales. This is equivalent to approximately $27,500 computed on an annual basis." (Italics supplied.)

As this Court just recently said in *Florida et al. v. The United States, supra,* "the raising of rates does not necessarily increase revenue. It may in particular localities reduce revenue instead of increasing it, by discouraging patronage."[1]

[1] In the *Florida Fertilizer Case*, 151 I. C. C. 602, the Interstate Commerce Commission, in refusing to order an increase in the Florida intrastate rates on fertilizer, said: "Furthermore it is not certain that if the Florida intrastate rates were increased to the interstate level additional revenue would accrue to the carriers, for if the prophecies of the interior plants and of the Florida Commission are justified, practically all shipments would be made from the ports with the result that the total charges would probably be no greater than they now are."

And in *Dayton-Goose Creek Railway Company v. United States*, 263 U. S. 456, 479, this Court said:

> "If the weaker roads were permitted to charge higher rates than their competitors, the business would seek the stronger roads with the lower rates, and congestion would follow."

The Joint Line Scale Is the Crux of the Practical Problem: The large Class I carriers, and the *large* producers of sand, gravel and crushed stone with plants on *large* roads, have a common interest in holding for themselves the advantage of the lower single-line scale of rates, and to impose the handicap of a higher joint line scale upon competing production points located on short lines.

Short line railroads and independent producers with plants located on railroads of limited length have a common vital interest in escaping from the imposition on them of the handicap of higher rates per mile of haul than their more powerful competitors enjoy.

The State authorities are interested in restoring a system of one-scale rates and fostering fair and even-handed competition from *all sources of supply*, in furtherance of an ambitious road building program.

These petitioners are not attempting herein, of course, to have the Court substitute its own finding of facts for that of the Interstate Commerce Commission, and the arguments herein have been addressed to the proposition of law, but since the practical questions in

the case are more or less technical, there is offered at the end of this brief as Appendix A some supplementary discussion of single and joint-line rate scales in relation to rate-making for short lines.

The Court can well take judicial notice, however, of the obvious fact that, in the general nature of things, producing points located on long lines of railroad, or branches thereof, can reach an extensive market territory by single-line hauls, whereas producing points on short lines can, as a rule, reach as extensive markets only by joint-line hauls. Hence it is obvious that where there is a materially higher rate scale for joint-line hauls than for single-line hauls, especially on low grade commodities, those producers and carriers which must do much or all of their business under the higher joint-line scales are under an economic handicap.

In the nature of things, short line railroads of the class represented by The American Short Line Railroad Association are usually located wholly within the confines of a single state, and the market radius of such low grade commodities as sand and gravel, produced on their rails, and in which competition is keen, is so narrowly confined as to be almost wholly intrastate. To place short lines, on intrastate movements of sand and gravel, under the burden of the distinctly higher average level of rates of the joint-line scale would seriously curtail the market radius of the producers of those commodities located upon short lines, would shift a large part of the revenue derived from their carriage from the short and weak roads to the longer and stronger lines, and would result in unjust discrimina-

tion against the short and weak roads, indispensable links, as they are, of our national system of transportation.

Hence, this is a striking example of the wisdom of the rule that only in the clearest sort of case will the Federal power interfere, and this is not such a case.

While the record shows that the so-called Docket 17517 scale of maximum interstate joint-line rates is higher than the Georgia intrastate scale to about the same extent that it is also higher than the Docket 17517 interstate scale of maximum single-line rates, there is no evidence of a convincing nature that shippers or localities in interstate commerce were unduly prejudiced by the rates prescribed by the Georgia Commission between points in Georgia, or evidence of any probative force to justify an inference to that effect.

The brief for the Georgia Public Service Commission, Appellants, so well analyzes the evidence which shows that to be the case that further discussion thereof will be omitted herefrom.

In the case of *Florida et al. v. The United States*, *supra*, this Court said that if the facts as to intrastate transportation of logs in Florida are such as to justify an order as to intrastate rates to end unjust discrimination between persons or localities, and undue burden upon the revenues of the carrier, the Interstate Commerce Commission may make such determination as the situation requires, *acting in accordance*

with the authority conferred by the statute. Similarly, in the case at bar, the Interstate Commerce Commission may reopen the case and take further evidence, if indeed any such could be produced, but on the present record, voluminous though it be, there is no substantial evidence on which to base a finding of unjust discrimination or undue burden.

CONCLUSION

It is undisputed that the Interstate Commerce Commission has the power to enter an order setting aside intrastate rates if it finds that the existing rates cause an undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate commerce, in a real sense and to a substantial degree, *provided* there is substantial evidence to support such findings.

It is respectfully contended, however, that the Commission has not made the requisite findings to support an order setting aside the intrastate rates in Georgia. It is also respectfully contended that the essential and basic findings necessary to support such an order would not be supported by substantial evidence in the record.

It is therefore submitted that upon the entire record the Court below should have entered its decree and order granting the relief prayed for, setting aside the Commission's report and order and enjoining the unlawful schedules of intrastate rates established by the

railroads in Georgia; and that the decree of the Court dismissing the bill is erroneous and should be reversed.

Respectfully submitted,

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April 28, 1931.

APPENDIX A

Uniform Rate Scales vs. Single and Joint-Line Scales

Text: "Crushed stone and related commodities are among the lowest valued commodities offered for transportation and will not move except at very low rates. The movement of these commodities is materially affected by transportation costs, and a slight rate difference is a serious matter between competing producers." (Cosumers Material Corporation v. Atchison, Topeka & Santa Fe Railway Company, et al., 160 I. C. C. 579, 581.)

The Interstate Commerce Commission is in the anomalous position of disapproving as a general rule of rate making the principle of joint-line rate scales on higher grade commodities which could best stand the imposition of the higher joint-line rate, and, at the same time, of prescribing the single and joint-line rate scale formula on the lowest grade commodities, sand, gravel and crushed stone, which can *least stand* the higher joint-line scale.

In other words, a differential on high class traffic is much to be preferred to a differential on low grade traffic, for the reason that the more costly and valuable the commodity the smaller is the relative importance of the freight rate to the commodity. On a commodity like silk, for example, the value is so great that a moderate differential would probably cut little or no figure at all in the competition between dealers

in silk or in the silk markets. But a differential is relatively more serious to carrier and shipper alike (a) the lower the grade of the commodity, and (b) the shorter the haul.

In the *Southern Class Rate Case*, 100 I. C. C. 513, 627, decided July 7, 1925, the Commission discussed the principle of joint line rate scales, saying:

> "Joint-line differentials or arbitraries rest on the *theory* that a joint-line haul costs more than a single-line haul. *But no attempt has been made to measure or even to estimate this extra cost*, and the differentials proposed are the product of unguided judgment. Nor is extra cost in physical handling always incurred. If, for instance, all lines in southern territory were consolidated under a single ownership, it does not follow that the method of operation over what are now joint-line routes would in all cases, or even in most cases, be changed materially. *While joint-line hauls ordinarily involve switching operations at the junction point and sometimes the transfer from car to car of less-than-carload freight, similar operations are common in the case of single-line hauls.* (Italics supplied.)
>
> "As has been shown, the carriers' maximum distance scale is strictly applied only for distances of 200 miles or less. In the case of the many specific rates proposed within the range of the scale and for greater distances, there is no evidence that the carriers have distinguished to any material extent between single-line and joint-line hauls. *Many of the complications which have been urged as an objection to the application of uniform distance rates are created by the joint-*

line differentials. When asked whether such differentials might not be eliminated if the single-line scale were made somewhat higher, a principal witness for the carriers was inclined to answer in the affirmative. As a 'first impression' he stated: (Italics supplied.)

> "'I am rather inclined the way my mind runs to get rid of complicating situations, and this single-line and joint-line scale, both under the carriers' proposal and Mr. Moore's proposal, adds somewhat to the complications. I question if it seriously increases your revenue.'

"We find:

> "*7. That no sufficient reason has been shown for joint line differentials or arbitraries, but that the absence of such differentials is a factor which should be given some weight in determining the level of the distance scale.*"

In the *Consolidated Southwestern Cases*, 123 I. C. C. 203, decided April 5, 1927, the Commission followed the same principles, saying at page 381:

> "Having had a similar situation before us in our investigation of class rates in southern territory, *Southern Class Rate Investigation*, we determined to prescribe a single distance scale of rates to apply locally throughout that territory, disregarding small differences in transportation conditions in different portions thereof, having been of the opinion that *in no other way could*

a reasonable rate structure be established that would be free from undue prejudice and preference as between communities and would afford to each community and territory a fair opportunity to do business in competition with others." (Italics supplied.)

A Joint-Line Scale on These Commodities is Especially Unfortunate: In *Brilliant Sand Company v. Baltimore & Ohio Railroad*, 139 I. C. C. 339, 342, the Commission took occasion to remark upon two very well known facts:

> *"The freight rate is an important factor in the sale of sand and gravel, because of the low selling price of these commodities. They are the lowest grade commodities known to commerce."*

Nevertheless, in the present case, the Commission gave short lines on which sand, gravel and crushed stone are produced the *privilege* of committing suicide by burdening their rates with arbitraries, in competition with producers on trunk roads and in addition it went even further by *requiring*, on Georgia intrastate traffic, the application of higher joint line mileage scales to producers on short lines than the low single line mileage scales which are available to producers on trunk roads.

Important Distinction Between Arbitraries and a Joint-Line Scale: It should be further pointed out that there is a vital difference between (a) permission to add arbitraries, and (b) the prescription of a joint-line scale:

(a) In the case of arbitraries the Commission leaves it to each short line to add same in whole or in part for its own individual benefit, just as the short line finds necessary. The connecting lines participating in the haul have no interest in the differential, so no precedent is involved if the short line puts it on or takes it off.

(b) In the case of two scales of rates, especially where the Interstate Commerce Commission cautions the carriers to stick to same closely because it has made the basic single line scale so low, the short line cannot reduce the joint rate without the consent of the connecting big road or roads, and that is usually impossible to obtain, particularly because, first, the trunk roads do not want to make any exceptions or precedents, and second, the trunk road usually has quarries or pits on its own line. As long as the Interstate Commerce Commission makes itself the "goat" the trunk line is not going to be very eager about voluntarily letting the short line quarry compete with the quarries on its own road on even terms.

The Injury to Short Lines Overlooked: It may well be asked how the almost discarded theory of both single and joint line rates came to be applied to sand, gravel and crushed stone. It seems obvious from the cases that it came about with the best of good intentions on the part of the Interstate Commerce Commission to all of those who appeared to be concerned. The unfortunate producers on short lines (or otherwise so located as to suffer the disadvantage of two-line hauls), did not, however, fully apprise the Commis-

sion of the injury which they would suffer. Hence it is quite evident that the Commission was really thinking only of the conditions on the trunk roads where there were compensating offsets, and did not have before it the conditions on short lines where there are no compensating offsets.

Among the conditions confronting the Commission in the more general of the recent sand, gravel and crushed stone cases has been an inconsistent and more or less chaotic mass of (a) special commodity rates, (b) rates made on combination, and (c) depressed rates induced by political subdivisions. In striving to bring about an orderly situation, the Commission has fixed scales, and in trying to arrive at a happy medium for all interests, it has begun with a low basic scale and endeavored to offset and compensate for that lowness (a) by encouraging the carriers to refrain from making any policy rates to political subdivisions or lesser special rates, (b) by confining the application of the low basic scale to single line hauls only, with joint line hauls on a higher rate level, and (c) by giving "relief" to the short lines through permission to tack on differentials for their own special benefit or suicide.

The Commission, however, explained its justification for the imposition of the joint line rate scales in terms which indicated its own doubt of the wisdom of so doing, thus:

> "In the case just cited we reached the conclusion that no sufficient reason had been shown

for joint-line arbitraries, but that the single scale to be prescribed should be made somewhat higher than if its application were to be confined to single-line routes. A similar conclusion was reached in *Fertilizer between Southern Points, supra.* As was there pointed out, a single scale without joint-line arbitraries has great practical advantages, particularly in simplicity of tariff construction, and can be justified upon other grounds as well. In the case of the commodities under consideration, however, there is perhaps more basis for joint-line arbitraries than in the case of any other form of traffic. *The very low value of these commodities makes the cost of transportation a most vital matter, and it may well be that even the slight increase in rate level over the single-line routes which the elimination of joint-line arbitraries would entail ought to be avoided.* Undoubtedy the greater proportion of this traffic moves over such routes. At all events, we have reached the conclusion that in the case of these commodities joint-line arbitraries may reasonably be permitted, but should be of lesser amounts and disappear at an earlier stage of the scale than the carriers propose. But this should not be construed as an indication that we favor joint-line arbitraries in the case of traffic of higher grade," *Rates on Chert, Clay, Sand and Gravel within State of Georgia,* 122 I. C. C. 133, 164. (Italics supplied.)

Principles of Rate Making for Weak Lines

Text: "Transportation Act, 1920, introduced into the federal legislation a new railroad policy." Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co., 257 U. S. 563, 585.

"The 1920 Act sought to ensure, also adequate transportation service. That such was its purpose Congress did not leave to inference. The new purpose was expressed in unequivocal language. And to attain it, new rights, new obligations, new machinery, were created. The new provision took a wide range." New England Divisions Case, 261 U. S. 184, 189.

"The new Act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. * * * To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the Commission. * * *" Dayton-Goose Creek Railway Company v. United States, 263 U. S. 456, 477.)

In the application of the principle set out in the foregoing texts, the Interstate Commerce Commission in *general* rate revisions since the passage of the Transportation Act of 1920 to which the Supreme Court referred, has manifested a considerate and liberal spirit with respect to short lines, and has expressed that spirit in numerous decisions. It is especially well expressed in *Southern Class Rate Investigation*, 100 I. C. C. 513, 650:

"Certain financially weak carriers of fair size and numerous so-called short lines seek special treatment.

* * * *

"These pleas raise a question of theoretical as well as practical significance. We have heretofore stated that the tendency in recent years has been to give more and more consideration to the national need for a properly coordinated railroad service; that this principle runs through the legislation of 1920; that its application will result in a greater degree of territorial uniformity in rates than would be possible if attention were concentrated on individual railroad properties; and that it assumes that differences in earning power will to a material extent be cared for by adjustments of divisions or through the operation of the recapture clause. *As a practical matter, however, the extent to which weak lines can be afforded relief in either of these ways is limited, and if such lines are to live in decent circumstances pending consolidation with stronger systems, departure from the principle of territorial uniformity in rates must in many cases be recognized.*

* * * *

"The record indicates that with this exception, the weak lines which sought special treatment from the outset in this proceeding are reasonably entitled to such relief and likewise many of the short lines which were represented at the hearing. *Apparently these weak lines and short lines are the objects of quite general sympathy in southern territory, and there is little disposition to question the fact that many of them need special help of some sort.* Most of them are so surrounded by

competitive influences, either of other railroads or of motor trucks, that their charges are limited by other factors than public regulation. *The problems which they face is to locate the point where higher rates begin to result in diminishing returns.*" (Italics supplied.)

In that case, and in certain other cases the Commission authorized short lines to employ the device of arbitraries to give them revenue needed immediately and imperatively, but at the same time the Commission was not without misgivings about the soundness of the method, for in that same decision, at page 653, it said:

"The plan of making through rates to and from local points on a combination or arbitrary basis is open to objection. *Such rates put the territory local to the weak or short line at serious disadvantage* and tend to hamper its development. They also run counter to the theory that the financial necessities of weak lines in such cases should be met by liberal divisions of joint rates." (Italics supplied.)

At page 654 the Commission said further:

"Shippers served by these lines will, of course, be at liberty also to make complaint, but we hope that they will in the first instance bring such complaints to the attention of the State commissions, for *we are desirous, particularly in the case of these little lines, of having the advice and help of the State authorities.* One important reason for believing that the interstate rates of these weak lines and short lines can safely be left to be handled in this way is the fact that, as aforesaid,

the charges which they may impose to their own financial advantage are now limited by other factors than public regulation." (Italics supplied.)

The subsequent course of events has justified the Commission's doubts, and the inexorable logic of the situation has led more and more short lines to relinquish the privilege of adding arbitraries or differentials for the reason that, if a short line is ever to develop and grow, it must be in position to serve the producers, whether they be producers from mines or from factories, at a transportation cost to those producers permitting them to compete on even terms with producers of the same commodities elsewhere.

The adverse effect upon short line traffic of adding short line arbitraries is no less serious than is the imposition of a joint line differential. Both are unsound in principle, a fact which the Interstate Commerce Commission, in the cases heretofore cited, has recognized.

APPENDIX B

THE STATUTES

The Interstate Commerce Act (41 Stat. L. 474; Title 49 U. S. C. Chap. 1.)

Sec. 13. (*As Amended June* 18, 1910, *and February* 28, 1920.)

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any State or the decision or order of any State authority to the contrary notwithstanding.

Sec. 15a. (*Added February* 28, 1920..)

(2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for the used in the service of transportation: *Provided*, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe different rates for different sections of the country.

(5) Inasmuch as it is impossible (without regulation and control in the interest of the commerce of the United States considered as a whole) to establish uniform rates upon competitive traffic which will adequately sustain all the carriers which are engaged in such traffic and which are indispensable to the communities to which they render the service of transportation, without enabling some of such carriers to receive a net railway operating income substantially and unreasonably in excess of a fair return upon the value of their railway property held for and used in the service of transportation, it is hereby declared that any carrier which receives such an income so in excess of a fair return, shall hold such part of the excess, as

hereinafter prescribed, as trustee for, and shall pay it to, the United States.

(6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of the railway property and the net railway operating income of a group of carriers, which the Commission finds are under common control and management and are operated as a single system, shall be computed for the system as a whole irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act* the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph (4).

*Transportation Act, 1920.

SUPREME COURT OF THE UNITED STATES.

No. 555.—October Term, 1930.

Georgia Public Service Commission, et al., Appellants, *vs.* United States of America, et al.	Appeal from the District Court of the United States for the Northern District of Georgia.

[June 1, 1931.]

Mr. Justice Brandeis delivered the opinion of the Court.

Rates on Chert, Clay, Sand, and Gravel Within State of Georgia, 122 I. C. C. 133, was a proceeding under § 13, paragraphs (3) and (4), of the Interstate Commerce Act in which the Commission was petitioned to determine whether certain intrastate carload rates on these products, prescribed by the Georgia Public Service Commission, were unduly prejudicial to persons or localities engaged in interstate commerce. Several related cases, arising out of complaints concerning interstate rates on like products between points in the southern territory, were heard on the same record and dealt with in the same report.[1] Therein, the Interstate Commerce Commission prescribed certain distance scales as a maximum reasonable for interstate single-line and joint-line rates between points in Georgia and points in other States; and found that there was no transportation reason for the maintenance of a different basis of intrastate carload rates for these commodities within the State of Georgia. It did not then enter an order in respect to the intrastate rates, because it believed "that the Georgia commission will cooperate in authorizing such revisions as might be necessary to bring their rates into harmony with the interstate adjustment herein approved." 122 I. C. C. 169-170.[2]

[1] The original report embraced eight cases. It was followed by a further report (140 I. C. C. 85) which, after a further hearing, prescribed scales for certain specific points of origin and destination in Florida. In some respects all these orders are involved in the suit at bar.

[2] In 1917 the Georgia Commission had undertaken to revise all intrastate class and commodity rates, but because of intervening federal control its order never became effective. After extensive hearings between 1921 and 1925, in-

Thereafter the carriers applied to the Georgia Public Service Commission for leave to establish the same distance scales for intrastate traffic. The State Commission refused the application and directed them to establish a scale differing from that applicable to interstate traffic. With that direction the carriers complied; but they petitioned the federal Commission to re-open its proceedings and to determine whether the prescribed intrastate rates result, and will result, in undue prejudice to persons or localities in interstate commerce and in unjust discrimination against such commerce. The petition to re-open the case was granted; the State authorities were again given due notice; and various parties intervened to oppose or support the contested intrastate rates. Upon the supplemental hearing, the Interstate Commerce Commission found that such prejudice and discrimination had resulted, and will result, from the rates prescribed by the Georgia Commission; and ordered the carriers to establish intrastate rates "which shall not be lower, distance considered, than the rates contemporaneously applicable" to the interstate commerce. 160 I. C. C. 309, 326.

To enjoin and set aside that order of the Interstate Commerce Commission, and to restrain the carriers from establishing intrastate rates pursuant thereto, two suits (now consolidated) were brought, under the Urgent Deficiencies Act, October 22, 1913, c. 32, 38 Stat. 208, 219, in the federal court for northern Georgia. The plaintiffs are the Public Service Commission and the State Highway Board of Georgia; the defendants, the United States and the Interstate Commerce Commission. Carriers operating in Georgia and shippers intervened as defendants. The cases were heard by the District Court on an application for an interlocutory injunction, the bills and answers alone being introduced. The injunction was denied. *Georgia Public Service Commission* v. *United States*, 39 F. (2d) 167. After final hearing on the full record of the proceedings before the Interstate Commerce Commission, the consolidated

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trastate commodity rates for Georgia were prescribed. On April 1, 1925, these rates were revised on the commodities here involved. As a result of this order, eight carriers filed the petition which initiated the present proceeding. 122 I. C. C. 140.

In the original hearing, the federal Commission found that the prescribed 1925 intrastate rates had not theretofore been unjustly discriminatory against interstate traffic, but that existing interstate distance scales were virtually broken down by the maintenance of so-called depressed rates which were almost wholly unrelated to distance, and that comprehensive interstate distance scales should be established. 122 I. C. C. 154, 168, 169.

bill was dismissed. 42 F. (2d) 467. This appeal is from the final decree.

First. Appellants contend that the order of the Interstate Commerce Commission is void, because it was entered without the full hearing prescribed by § 13 (4). The argument is this. Paragraph 4 prescribes that "Whenever . . . the Commission, after full hearing, finds" a State rate to be unlawful because it causes undue prejudice or unjust discrimination, "it shall prescribe the rate, fare or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged." Act of February 28, 1920, c. 91, § 416, 41 Stat. 456, 484, amending Act of February 4, 1887, c. 104, § 13, 24 Stat. 379, 383. The claim is that there was no "full hearing" before entry of the challenged order, because the Commission limited the supplemental hearing to the question of prejudice and discrimination, and refused to consider anew the question of the reasonableness of the interstate scales. It is true that when state rates are assailed on the ground that they result in undue prejudice to interstate shippers or discriminate against interstate commerce, the Commission must determine whether the existing interstate rates are reasonable, as it may not require intrastate rates to be raised above a reasonable level. *State Corporation Commission of Virginia* v. *Aberdeen & Rockfish R. R. Co.*, 136 I. C. C. 178, 180. But the reasonableness of the interstate rates had already been found when they were established in the earlier stage of the proceedings; and at those hearings the Georgia Commission and the Highway Board were represented. Nearly eighteen months had elapsed since the original order,[3] but no evidence was offered at the supplemental hearing to show that conditions had so changed since the interstate rates were prescribed as to require reconsideration of the issue. The appellants' objection to the procedure is unfounded.[4]

Second. Appellants contend that while the order prescribes a minimum and a maximum basis for intrastate rates, the minimum

[3] This order, establishing the so-called 175% scale, was entered on January 21, 1927, and rates under it became effective October 1, 1927. The supplementary order of the Georgia Public Service Commission was entered March 13, 1928. The proceedings before the federal Commission were reopened on June 4, 1928.

[4] The Commission stated: "For the purpose of determining whether or not this [the alleged discrimination] is the fact, the proceedings were reopened and the further hearing had. The scope of the further hearing was

basis is so vague and uncertain as to render the entire order void. The order requires the carriers to establish intrastate rates "which shall not be lower, distance considered, than those contemporaneously applicable to interstate transportation of the same commodities, in straight or mixed carloads, between points in the State of Georgia, and from points in other States in southern territory, except Florida, to points in the State of Georgia, not exceeding the rates set forth in the Appendix to this report and heretofore found and prescribed as reasonable in No. 17517 for the interstate transportation of said commodities in straight or mixed carloads." The claim is that this language leaves it doubtful whether the word "contemporaneously" refers only to rates in force at the time of the effective date of the original order, or also to such rates as may be made by the carriers from time to time thereafter, thereby raising or lowering future intrastate rates without the full hearing provided for by § 13 (4). We think it clear from the terms of the order that the interstate rates referred to are those now applicable and maintained. Compare *Shreveport Case*, 234 U. S. 342, 346-347; *Alabama* v. *United States*, 279 U. S. 229. When the order is read, as must be done, in the light of the report, *American Express Co.* v. *Caldwell*, 244 U. S. 617, 627, this and other alleged uncertainties are removed.[8]

The order here challenged is state-wide in operation; and it governs a vast multitude of rates. Because of divergent conditions,

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properly limited to the question indicated. If the contention made . . . in this regard were sound, then our efforts to secure cooperative action in situations such as here presented, instead of bringing about that result, could be made the instrument of burdening this commission with endless investigations covering the same subject matter and would result in litigation being prolonged indefinitely." 160 I. C. C. 313. Compare Railroad Commission of Wisconsin v. Chicago, Burlington & Quincy R. R. Co., 257 U. S. 563, 591.

[8]Two other ambiguities are charged. It is urged that the phrase, "distance considered," is not complete since it does not indicate whether the distance of joint-line or single-line hauls is meant. Under the original order establishing the 17517 scales, the rate is determined by the distance scale comprised in the shortest route over which carload traffic can be moved without transfer of lading, irrespective of whether such route necessitates a single or joint-line haul. This formula is readily applicable to intrastate shipments. It is also argued that since several carriers are charging less than the 17517 scales, the order is uncertain because it does not indicate whether the minimum intrastate scale is to be determined by the prescribd interstate scale or by the actual departures from it.

a doubt may well arise in applying the rule prescribed to some particular situation. But possible uncertainty of application in isolated instances is not a sufficient ground for setting aside in its entirety, by judicial process, a carefully drawn order, otherwise valid and practicable of operation over a wide territory. The appropriate remedy under such circumstances is an application to the Commission requesting it to suspend the operation of the order insofar as it may affect the isolated cases; and, if necessary, to enter an independent order dealing specifically with them. *American Express Co.* v. *Caldwell*, 244 U. S. 617, 627. Such specific order, if appropriate for review under the Urgent Deficiencies Act, could be dealt with by the courts without interfering with the operation of the order as a whole or with the flexible administrative processes by which it may from time to time be modified. Compare *Railroad Commission of Wisconsin* v. *Chicago, Burlington, & Quincy R. R. Co.*, 257 U. S. 563, 591; *Interstate Commerce Commission Rules of Practice*, Rule XV (c); and the practice in *State Corporation Commission of Virginia* v. *Aberdeen & Rockfish R. R. Co.*, 136 I. C. C. 173; 161 I. C. C. 273, 286; 165 I. C. C. 31; 169 I. C. C. 728; *Southern Class-Rate Investigation*, 100 I. C. C. 513; 109 I. C. C. 300, 113 I. C. C. 200; 128 I. C. C. 567; *Eastern Class-Rate Investigation*, 164 I. C. C. 314; 171 I. C. C. 481. It is true that the Georgia Public Service Commission petitioned the federal Commission for an interpretation of the order now challenged. But its petition, which occupies fourteen pages of the printed record, was in effect a petition for rehearing of the state-wide order.[4] Compare *New England Divisions Case*, 261 U. S. 184, 204.

Third. The appellants contend that the order is void because there are no adequate findings of undue disparity between the rates charged for intrastate transportation in Georgia and the rates actually in force for interstate transportation; and also because

[4] The State Commission requested a rehearing or a further order that the carriers file, within a definite time, complete intrastate schedules so that specific objection might be made. Since there were hundreds of shipping and receiving points, every local municipality and county being a potential customer for these roadbuilding products, the enforcement of this request would have involved a complete reopening of the proceedings. A few specific difficulties in application were outlined in the state commission's petition, but these were offered, not for definite rulings, but merely by way of illustrating defects in the order.

there was no finding that the intrastate rates imposed an undue burden upon the carriers' interstate revenues or that the alteration of the intrastate rates would produce additional revenue. The findings in the report are definite and comprehensive. There are, moreover, illustrative specific findings which confirm the general ones and show that in a real sense, and to a substantial degree, undue prejudice and discrimination to interstate shippers and localities have resulted and will result.[7] The requirement of definiteness, to which attention was called in *Beaumont, Salt Lake & Western R. R. Co.* v. *United States*, 282 U. S. 74, 86 and in *Florida* v. *United States*, 282 U. S. 194, 208, is also met.

Fourth. The appellants contend that the findings are unsupported by the evidence. When an investigation involves shipments from and to many places under varying conditions, typical instances justify general findings. *Railroad Commission of Wisconsin* v. *Chicago, Burlington, & Quincy R. R. Co.*, 257 U. S. 563, 579. Compare *Beaumont, Salt Lake & Western Ry. Co.* v. *United States*, 282 U. S. 74, 83. While the order relates only to a few commodities, the scales of rates are statewide in operation; and they apply to shipments between hundreds of points of origin and destination. To require specific evidence and separate adjudication in respect to each would be tantamount to denying the possibility of granting relief. Compare *New England Divisions Case*, 261 U. S. 184; *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co., loc. cit. supra.* The evidence was comprehensive in scope. It occupies 556 pages of the printed record; and there were besides 337 exhibits.[8] The proof of the discrimination against interstate

[7] The findings as to prejudice to interstate shippers embraced almost all of the commodities considered and included large scale producers which were able to absorb rate differentials in some parts of the State but could not compete in all parts. Moreover, rate differences were found to be highly detrimental because the commodities here involved are among the lowest valued for shipment, and the cost of transportation is a relatively large, and often conclusive, factor in the cost to consumers. The Commission compiled from the exhibits a series of tables which indicated that the rates prescribed by the State Commission were, within the usual intrastate traffic distances, either equal to or less than the 17517 scales for single-line hauls, and uniformly less than the interstate scales for joint-line hauls. 160 I. C. C. 314, 316. Similarity of operating and transportation conditions was clearly established and found.

[8] By stipulation these, and the various tariff schedules, were not reprinted but were brought here in their original form.

commerce was specific and typical, and was clearly sufficient to establish the undue prejudice to interstate shippers. Compare *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Tennessee*, 262 U. S. 318; *United States* v. *Illinois Central R. R. Co.*, 263 U. S. 515.

Fifth. Appellants contend that the order was an arbitrary exercise of the Commission's limited power over intrastate rates and that it constitutes an invasion of the sovereign rights of the State. It is urged, among other things, that while the findings require intrastate rates no lower, distance considered, than those contemporaneously applicable on interstate traffic, the Commission had theretofore consistently held that distance is not the sole controlling factor in rates;[9] and also that the Commission's allowance of higher rates for joint-line hauls is inconsistent with uniform scales established by it in other decisions.[10] The argument is, in effect, an appeal to this Court to review the exercise of administrative discretion. It is not our province to enquire into the soundness of the Commission's reasoning, the wisdom of its decisions, or the consistency of its conclusion with those reached in similar cases. *Western Paper Makers' Chemical Co.* v. *United States*, 271 U. S. 268, 271. The facts to which our attention is called furnish no support for the charge of arbitrariness or of invasion of the sovereign rights of the State. Compare *Shreveport Case*, 234 U. S. 342, 354; *American Express Co.* v. *Caldwell*, 244 U. S. 617, 625.

Affirmed.

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[9]It is pointed out that where traffic density varies or transportation conditions are different, the Commission has recognized that distance alone should not be a controlling factor. But the cost elements involved in the movement of the low grade commodities here concerned were adequately considered in the first hearing in which the reasonableness of the 17517 distance scales was determined. Those rates took "fully into consideration the very low values of these commodities and all characteristics, transportation and otherwise, which entitle them to relatively low rates. It will be a scale, in our opinion, from which the carriers ought not to depart." 122 I. C. C. 148. In part as a result of the order then entered and in part by voluntary extensions by the carriers, these scales were put into force throughout most of the southern territory, and were also adopted intrastate in four states. The further finding as to the similarity in transportation conditions in interstate and intrastate shipments was amply sustained by the evidence.

[10]It is argued that the federal Commission has never permitted dual scales in similar cases; that even where allowed, the two scales have merged after relatively short distances; and that the evidence and findings in either report are insufficient to support a higher joint-line scale for the class of commodities here in question.